Supreme Court, U.S.
FILED

03 457 SEP 23 2003

No. _____

OFFICE OF THE CLERK

In the Supreme Court of the United States

ALAMEDA FILMS, S.A., et al.,
Petitioners,

v.

AUTHORS RIGHTS RESTORATION CORPORATION, MEDIA RESOURCES INTERNATIONAL, L.L.P., TELEVISION INTERNATIONAL SYNDICATORS, INC., and H. JACKSON SHIRLEY, III
Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

PETER THOMPSON
Counsel of Record
STEVEN S. REILLEY
THOMPSON & REILLEY, P.C.
1200 SMITH, SUITE 660
HOUSTON, TX 77002
(713) 658-0880

Counsel for Petitioner

BECKER GALLAGHER LEGAL PUBLISHING, INC.,
CINCINNATI, OHIO 800-890-5001

QUESTIONS PRESENTED

1. What deference, if any, is owed by U.S. courts to a foreign government's interpretation of its own laws?

2. Should courts look to the plain language of the Uruguay Round Agreements Act, 17 U.S.C. § 104A, in interpreting its provisions?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners

Alameda Films, S.A., Cima Films, S.A. de C.V.; Cinematografica Filmex, S.A. de C.V., Cinematografica Jalisco, S.A. de C.V., Cinematografica Sol, S.A. de C.V., Cineproducciones Internacionales, S.A. de C.V., Clasa Films, S.A. de C.V., Cinevision, S.A. de C.V., Cumbre Films, S.A. de C.V., Diana Internacional Films S.A. de C.V., Filmadora Mexicana S.A. de C.V., Gazcon Films, S.A. de C.V., Grupo Galindo S.A. de C.V., F. Mier, S.A., OroFilms S.A. de C.V., Peliculas y Videos Internacionales S.A. de C.V., Procinema, S.A. de C.V., Producciones EGA, S.A. de C.V., Producciones Galubi, S.A., de C.V., Producciones Matouk, S.A., de C.V., Producciones Rosas Priego, S.A. de C.V., Producciones Torrente S.A. de C.V., Producciones Virgo S.A. de C.V., and Video Universal, S.A. de C.V., are foreign privately held corporations. No publicly held corporation owns 10 percent or more of any of Petitioner's stock.

Respondents

Authors Rights Restoration Corporation, Media Resources International, L.L.P., and Television International Syndicators, Inc., are privately held entities. Petitioners are unaware of any publicly owned parent corporation owning 10 percent or more of any these entities' stock. H. Jackson Shirley, III, is an individual citizen of the United States residing in the Southern District of Texas.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding and
Corporate Disclosure Statement ii

Table of Contents iii

Table of Authorities v

Opinions Below 1

Statement of Jurisdiction 1

Statutory Provisions Involved 1

Statement of the Case 3

I. Overview of the Case 3

II. Background of the Case 4

III. Proceedings Below 5

Reasons for Granting the Petition 5

I. The Fifth Circuit Failed to Give Deference to a Foreign Government's Interpretation of that Government's Own Laws 6

II. The Fifth Circuit Failed to Apply the Plain Language of the Uruguay Round Agreements Act, 17 U.S.C. § 104A 8

III. The Issue is of Substantial Importance in International Law Calling for an Exercise of the Court's Supervisory Power 10

A. The Decision impacts copyrights of countless works from many nations 10

B. The Fifth Circuit's failure to show due deference to the Government of Mexico impacts foreign relations and the comity of nations 11

Conclusion 12

Appendix

Appendix A
Fifth Circuit Court of Appeals Order Denying Petitions for Rehearing Dated June 26, 2003 . . . . . 1a

Appendix B
Fifth Circuit Court of Appeals Opinion
Dated May 19, 2003 . . . . . 3a

Appendix C
Order of the United States District Court for the Southern District of Texas Houston Division
Dated March 31, 2000 . . . . . 30a

Appendix D
Brief of *Amicus Curiae* The Government of Mexico Filed in the Fifth Circuit Court of Appeals
Dated July 22, 2002 . . . . . 40a

TABLE OF AUTHORITIES

Cases:

Ardestani v. I.N.S., 502 U.S. 129 (1991) 9

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,
467 U.S. 837 (1984) 7

Cordon Holding B.V. v. Northwest Publishing Corp,
2002 WL 530991 (S.D.N.Y. 2002) 8

Dam Things From Denmark v. Russ Berrie & Co.,
173 F. Supp. 2d 277 (D.N.J. 2001),
vacated on other grounds,
290 F.3d 548 (3rd Cir. 2002) 8

Federal Bureau of Investigation, et al. v. Abramson,
456 U.S. 615 (1982) 9

Kaiser Aluminum & Chemical Corp., et al., v. Bonjorno, et al.,
494 U.S. 827 (1990) 9

In re Oil Spill by the Amoco Cadiz,
954 F.2d 1279 (7th Cir. 1992) 7

United States v. Pink, 315 U.S. 203 (1942) 7

United States v. Wells, 519 U.S. 482 (1997) 9

Statutes:

17 U.S.C. § 104A 1, 4, 8

17 U.S.C. § 104A(a)(1)(A) 4

17 U.S.C. § 104A(h)(2)(A) 4

17 U.S.C. § 104A(h)(6) 1, 8

17 U.S.C. § 104A(h)(6)(B) 1, 3

28 U.S.C. § 1254(1) 1

Other Authority:

García Riera, E., HISTORIA DEL CINE MEXICANO, Vols. 1 - 4 (1993) 10

Hale, C., THE CIVIL LAW TRADITION AND CONSTITUTIONALISM IN TWENTIETH-CENTURY MEXICO: THE LEGACY OF EMILIO RABASA, 18 Law & Hist. Rev. 257 (2000) 10

Murillo, M., THE EVOLUTION OF CODIFICATION IN THE CIVIL LAW LEGAL SYSTEMS: TOWARDS DECODIFICATION AND RECODIFICATION, 11 J. Trans. Law & Policy 163 (2001) 10

NIMMER ON COPYRIGHTS § 9A.01 4

Vinas, M., INDICE CRONOLOGICO DEL CINE MEXICANO 1896-1992 (1992) 10

Waller, S., A UNIFIED THEORY OF TRANSNATIONAL PROCEDURE, 26 Cornell Int'l. L. J. 101 (1993) 7

OPINIONS BELOW

The U.S. Court of Appeals for the Fifth Circuit's denial of the petitions for rehearing, dated June 26, 2003, is reported at 2003 U.S. App. LEXIS 15377, and is reprinted at App. 1a - 2a. The May 19, 2003, Fifth Circuit panel opinion is reported at 331 F.2d 472 (5th Cir. 2003), and is reprinted at App. 3a - 29a. The March 31, 2000, order of the United States District Court for the Southern District of Texas is reprinted at App. 30a - 39a.

STATEMENT OF JURISDICTION

The Fifth Circuit issued its order denying the petition for rehearing on June 26, 2003. This petition for certiorari is timely in that Petitioners have filed it within 90 days of June 26, 2003. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of the Uruguay Round Agreements Act ("URAA"), Pub. L. 103-465, 108 Stat. 4809 (1994), codified in part at 17 U.S.C. § 104A. Specifically, 17 U.S.C. § 104A(h)(6)(B) is the relevant statutory provision at issue in this Petition.

17 U.S.C. § 104A(h)(6) provides:

> (6) The term "restored work" means an original work of authorship that –
>
> (A) is protected under subsection (a);

(B) is not in the public domain in its source country through expiration of term of protection;

(C) is in the public domain in the United States due to –

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility;

(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States

during the 30-day period following publication in such eligible country; and

(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.

STATEMENT OF THE CASE

I. Overview of the Case

The Fifth Circuit panel ("panel") affirmed the district court's summary judgment ruling against Petitioners and its holding that the seven films at issue are ineligible for U.S. copyright restoration under the URAA. The panel held that the seven films fell into the public domain in Mexico and are therefore ineligible for U.S. copyright restoration under the URAA. (App. B at 19a). In doing so, the panel interpreted and applied both the URAA and Mexican copyright law. The panel ignored the reasoned interpretation of the Mexican government of its own laws respecting copyrights, and failed to give the deference owed a foreign government in interpreting its own laws. The Mexican government filed an *amicus curiae* brief stating that these seven films did not fall into the public domain in Mexico and in particular that the "term of protection" under Mexican law had not "expired" as required by the plain language of 17 USC § 104A(h)(6)(B).

II. Background of the Case

In the mid-1980s, Respondents began distributing a variety of Mexican films in the U.S. (App. B at 6a). This activity included 88 films that had been produced and released by Petitioners in Mexico during that country's "golden age" of cinema, between the late-1930s and the mid-1950s (*Id.*). The films at issue lost their copyrights in the U.S. for failure of the authors to comply with U.S. copyright formalities, such as registering and renewing copyrights (*Id.*). However, the legal status of these films changed in 1994 when the U.S. adopted the URAA, thereby amending the 1976 Copyright Act.[1] The URAA was implemented to retroactively bring the United States into compliance with obligations under the Berne Convention by giving U.S. copyright protection to foreign works that enjoy protection in their country of origin.[2] The URAA provides for the automatic restoration of copyrights in foreign works that fell into the public domain in the U.S. as a result of their foreign authors' failure to follow U.S. copyright formalities.[3]

Respondents continued to distribute Mexican films in the U.S. after January 1, 1996, the date on which the U.S. copyrights were automatically restored in those films that were eligible for copyright restoration under the URAA (App. B at 7a).

---

[1] *See* 17 U.S.C. § 104A (codifying the portion of the URAA pertaining to copyright).

[2] NIMMER ON COPYRIGHTS § 9A.01

[3] 17 U.S.C. § 104A(a)(1)(A) & (h)(2)(A).

III. Proceedings Below

Petitioners filed suit alleging that Respondents violated Petitioners' U.S. copyrights in 88 films, seven of which are at issue in this Petition (*Id.*). Respondents filed a motion for summary judgment, claiming that the seven films at issue are ineligible for copyright restoration under the URAA because they were in the public domain in Mexico (*Id.*). The district court granted Respondents' motion for summary judgment concerning the copyright status of the seven films, ruling that they had fallen into the public domain in Mexico (App. B at 8a and App.C at 36a-38a).[4]

On appeal to the Fifth Circuit, the Mexican Government filed an amicus brief establishing that 1) the "term of protection" for these films had not expired, and 2) these films are not in the public domain in Mexico (App. D at 66a). The Fifth Circuit ignored these arguments of Mexico regarding its own law and affirmed the district court (*See* App. B).

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10 identifies considerations used by the Court in deciding whether to exercise its discretion to grant a petition for writ of certiorari. One consideration is that a "United States court of appeals has entered a decision in conflict with the decision of another United States court of

---

[4] At trial on the remaining 81 films, the jury awarded Petitioners copyright infringement damages of $1,512,000, unfair competition damages of $486,000, and attorneys' fees and costs of $984,000. The Fifth Circuit affirmed the judgment with respect to these films, with the exception of the quantum of attorneys' fees awarded, which it vacated and remanded. App. B at p. 28a. Those rulings of the Fifth Circuit are not at issue in this Petition.

appeals on the same important matter. . . ." Another consideration is that a that a "United States court of appeals has decided an important question of federal law . . . that conflicts with relevant decisions of this Court." Finally, the Court considers whether the court of appeals decision "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power. . . ."

All of these considerations are present in this case. Review is warranted to provide guidance to the lower courts on the appropriate standard of deference to apply to foreign governments' interpretations of their own law and the interpretation of the URAA. The Fifth Circuit's failure to give any deference to Mexico's interpretation of its own law is at conflict with the Seventh Circuit. The Fifth Circuit's interpretation of the URAA conflicts with the Court's guidance on following the plain language of a given statute. And, the Fifth Circuit's interpretation of the URAA so departs from accepted judicial proceedings as to negatively impact our nation's relationship with foreign governments.

I. The Fifth Circuit Failed to Give Deference to a Foreign Government's Interpretation of that Government's Own Laws

The Fifth Circuit failed to give deference to the interpretation of Mexican law advanced by the Mexican government in its amicus brief (App. D). In its Opinion, the Fifth Circuit erroneously affirmed the district court's determination that, under Mexican law, the seven films are in the public domain in Mexico by not giving appropriate weight to the Mexican government's interpretation of its own laws.

In its amicus brief, the Government of Mexico was very clear about its position on these matters. Regarding all seven films, the Mexican government concluded that these films never entered the Mexican public domain, thus entitling them to a restored U.S. copyright. (App. D at 66a).

The Fifth Circuit's failure to give deference to the Mexican government's interpretation of its own laws creates a circuit split on this issue warranting review by the Court. The Seventh Circuit has held that substantial deference should be given to a foreign government's interpretations of its own laws. *In re Oil Spill by the Amoco Cadiz*, 954 F.2d 1279, 1312 (7th Cir. 1992). In support of its position the Seventh Circuit relied on the deference U.S. Courts give to administrative agencies' interpretations of legislation. *Amoco Cadiz*, 954 F.2d at 1312 (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). The Seventh Circuit concluded that a sovereign nation's interpretations of its own laws should not be given less respect in U.S. courts than the interpretations of U.S. administrative agencies. *Id.*

The Seventh Circuit's holding that U.S. Courts should give substantial deference to a foreign government's interpretation of its own laws is the proper approach. *United States v. Pink*, 315 U.S. 203, 220 (1942)(stating that an official Russian declaration concerning the intended effect of a Russian decree is conclusive); and Waller, S., A UNIFIED THEORY OF TRANSNATIONAL PROCEDURE, 26 Cornell Int'l. L. J. 101, 124 (1993)("As a corollary to the act of state doctrine, both state and federal courts further are bound by a foreign government's interpretation of its own legal pronouncements."). Giving substantial deference to foreign governments promotes international comity and respect for the sovereignty of foreign nations. In some circumstances

substantial deference may prevent embarrassment to the Executive Branch in its conduct of foreign relations. Furthermore, the Seventh Circuit's substantial deference approach recognizes that the government responsible for enacting a law that affects its citizens is in the best position to provide U.S. Courts with guidance on how it interprets and applies the law within its own borders. The Fifth Circuit chose to ignore notions of comity and Mexico's sovereignty by not giving any deference to the Mexican government's interpretation of Mexican copyright laws. By failing to give proper deference to the Mexican government the Fifth Circuit's decision has created an undesirable circumstance in which these films have copyright protection under Mexican law that is not recognized under United States law.

II. The Fifth Circuit Erred in Failing to Apply the Plain Language of the Uruguay Round Agreements Act, 17 U.S.C. § 104A

In order to be eligible for a restored copyright, a foreign work, among other things, must not be in the public domain in the source country ***through the expiration of term of protection***. 17 U.S.C. § 104A(h)(6) (emphasis added). In its Opinion, while the Fifth Circuit acknowledged the requirement that the subject work not be in the public domain of the source country, the language emphasized above was absent from the court's analysis (App. B at 15a). This language has been determined to be an important part of the construction of the restored copyright statute by other courts. *See e.g., Dam Things From Denmark v. Russ Berrie & Co.*, 173 F. Supp. 2d 277, 284 (D.N.J. 2001) ("Specifically, the work sought to be restored must not be in the public domain in the source country due to expiration."), *vacated on other grounds*, 290 F.3d 548, 556-57 (3rd Cir. 2002); *see also Cordon Holding B.V. v. Northwest Publishing Corp*, 2002

WL 530991, *8 (S.D.N.Y. 2002) (analyzing whether work had entered public domain of source country through expiration of the term of protection).

The referenced statutory language ("through the expiration of the term of protection") is extremely important to the analysis of the seven films at issue, especially when considered in conjunction with the 1947 revision to the Mexican civil code, which abolished the necessity of registration of a work in order to receive copyright protection. Contrary to the Fifth Circuit's Opinion, the Petitioners did not ask that the court "judicially rewrite the 1947 statute . . . ." (App. B. at 18a). Rather, the Film Owners asked only that the court properly apply the statute in question, and that the court give proper deference to the Mexican government's interpretation of its own law.

This Court has consistently held that the starting point for interpreting a statute is the language of the statute itself. *Ardestani v. I.N.S.*, 502 U.S. 129, 135 (1991); *see also Kaiser Aluminum & Chemical Corp., et al., v. Bonjorno, et al.*, 494 U.S. 827, 835 (1990). "Absent a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive." *United States v. Wells*, 519 U.S. 482, 497 (1997). *See also Federal Bureau of Investigation, et al. v. Abramson*, 456 U.S. 615, 638 (1982) ([i]t is elementary that the plain language interpretation of a statute enjoys a robust presumption in its favor. . .").

Based upon the plain language of the URAA coupled with the Mexican government's well reasoned explanation of the meaning and intent of its laws, the seven films involved in this case that were exhibited prior to 1948 are eligible for copyright restoration in the United States. This Court should give deference to Mexico's interpretation of its own laws, as

well as Mexico's discussion of the important public policy issues involved in this case. The Fifth Circuit erred in failing to apply the plain language interpretation of the Uruguay Round Agreements Act.

III. The issue is of Substantial Importance in International Law Calling for an Exercise of the Court's Supervisory Power

A. The Decision impacts copyrights of countless works from many nations.

The impact of the Fifth Circuit's decision will be devastating not only to the Mexican film industry, but to the holders of restored U.S. copyrights of many nations. With a stroke the Fifth Circuit's harsh interpretation affects restored copyrights in approximately 700 Mexican films.[5] Additionally, this ruling potentially applies to numerous restored works of all types from other civil code countries, whose laws mirror those enacted in Mexico in 1928 and 1947.[6]

---

[5] *See, generally,* García Riera, E., HISTORIA DEL CINE MEXICANO, Vols. 1 - 4 (1993); and Vinas, M., INDICE CRONOLOGICO DEL CINE MEXICANO 1896 - 1992, pp. 32 - 123 (1992), for lists of Mexican films published during the years at issue.

[6] Civil code countries include most of the European Union, Central America, South America, and Mexico. Mexico and these other civil code nations often model their codifications after each other. *See, e.g.,* Hale, C., THE CIVIL LAW TRADITION AND CONSTITUTIONALISM IN TWENTIETH-CENTURY MEXICO: THE LEGACY OF EMILIO RABASA, 18 Law & Hist. Rev. 257, 264 (2000); and Murillo, M., THE EVOLUTION OF CODIFICATION IN THE CIVIL LAW LEGAL SYSTEMS: TOWARDS DECODIFICATION AND

It is widely recognized that the films produced in Mexico from the late 1930s through the mid-1950s were of such quantity and quality that the time period is known as Mexico's "golden age" of cinema. The Mexican films at issue here were released between 1936 and 1946, a period covering most of this golden age. The Mexican government, first in its negotiations with the United States and Canada in coming to terms under the North American Free Trade Agreement ("NAFTA"), and later during negotiations of the URAA, sought to restore U.S. copyright protection in these important patromonial works. It would be offensive to foreign relations to allow the intent of these negotiations to be undermined while ignoring the Mexican government's position.

B. The Fifth Circuit's failure to show due deference to the Government of Mexico impacts foreign relations and the comity of nations

Resolution of this dispute is critical because it raises issues that touch on the political and economic forces that drove the United States Congress, under the auspices of NAFTA and the General Agreement on Tarriffs and Trade ("GATT"), to grant unprecedented copyright restoration rights to film producers in Mexico and Canada. The dispute is critical to the policies of the Government of Mexico because the films at issue constitute a vital part of Mexico's acclaimed film history, Mexico's cultural patrimony, and, by implication, Mexico's foreign policy goals.

The Government of Mexico fully explained how its laws at issue operate such that the films meet the requirements of

---

RECODIFICATION, 11 J. Trans. Law & Policy 163, 164 nn.1-4 (2001).

the URAA and are entitled to restored U.S. copyright protection. The Fifth Circuit squarely rejected the Government of Mexico's position on how its laws should be interpreted. This complete lack of deference to a foreign government's interpretation of its own laws has very real potential to embarrass not only our nation but to affect the comity of nations.

CONCLUSION

The petition for writ of certiorari should be granted. The Fifth Circuit's decision conflicts with decisions of another court of appeals, decisions of the Court, and the government of Mexico's interpretations of its own law. A grant of certiorari would allow this Court to establish national guidelines on the deference due to foreign governments in interpreting their own laws.

Respectfully submitted,
THOMPSON & REILLEY, P.C.
Peter Thompson
Counsel of Record
Steven S. Reilley
1200 Smith, Suite 660
Houston, Texas 77002
(713) 658-0880

Counsel for Petitioners

SEPTEMBER 23, 2003

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20869

[Filed June 26, 2003]

ALAMEDA FILMS S A DE C V;	)
CIMA FILMS S A DE CV;	)
CINEMATOGRAFICA FILMEX S A DE C V;	)
CINEMATOGRAFICA JALISCO S A DE C V;	)
CINEMATOGRAFICA SOL S A DE C V;	)
Plaintiffs - Counter Defendants - Appellees -	)
Cross Appellants;	)
	)
CINEPRODUCCIONES INTERNATIONAL	)
S A DE C V; CINEVISION S A DE CV;	)
DIANA INTERNACIONAL FILMS S A DE C V;	)
FILMADORA MEXICANA S A DE C V;	)
GAZCON FILMS S A DE C V;	)
GRUPO GALINDO S A DE C V;	)
MIER S A DE C V; ORO FILMS S A DE C V;	)
PELICULAS Y VIDEOS INTERNACIONALES	)
S A DE C V; PROCINEMA S A DE C V;	)
PRODUCCIONES EGA S A DE C V;	)
PRODUCCIONES GALUBI S A DE C V;	)
PRODUCCIONES MATOUK S A DE C V;	)
PRODUCCIONES ROSA PRIEGO S A;	)
PRODUCCIONES TORRENTE S A DE C V;	)

PRODUCCIONES VIRGO S A DE C V;)
VIDEO UNIVERSAL S A DE C V;)
SECINE S A DE C V;)
CUMBRE FILMS S A DEC V,)
Plaintiffs - Appellees - Cross Appellants)
)
v.)
)
AUTHORS RIGHTS RESTORATION)
CORPORATION INC; MEDIA RESOURCES)
INTERNATIONAL LLP; TELEVISION)
INTERNATIONAL SYNDICATORS INC;)
H JACKSON SHIRLEY, III,)
Defendants - Counter Claimants -)
Appellants - Cross Appellees)
)

Appeals from the United States District Court
for the Southern District of Texas, Houston

ON PETITIONS FOR REHEARING

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petitions for rehearing are DENIED.

ENTERED FOR THE COURT:

/s/_____
Jacques L. Wiener, Jr.
United States Circuit Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20869

[Filed May 19, 2003]

ALAMEDA FILMS S A DE C V;	)
CIMA FILMS S A DE CV;	)
CINEMATOGRAFICA FILMEX S A DE C V;	)
CINEMATOGRAFICA JALISCO S A DE C V;	)
CINEMATOGRAFICA SOL S A DE C V;	)
Plaintiffs - Counter Defendants - Appellees -	)
Cross Appellants;	)
	)
CINEPRODUCCIONES INTERNATIONAL	)
S A DE C V; CINEVISION S A DE CV;	)
DIANA INTERNACIONAL FILMS S A DE C V;	)
FILMADORA MEXICANA S A DE C V;	)
GAZCON FILMS S A DE C V;	)
GRUPO GALINDO S A DE C V;	)
MIER S A DE C V; ORO FILMS S A DE C V;	)
PELICULAS Y VIDEOS INTERNACIONALES	)
S A DE C V; PROCINEMA S A DE C V;	)
PRODUCCIONES EGA S A DE C V;	)
PRODUCCIONES GALUBI S A DE C V;	)
PRODUCCIONES MATOUK S A DE C V;	)
PRODUCCIONES ROSA PRIEGO S A;	)
PRODUCCIONES TORRENTE S A DE C V;	)

PRODUCCIONES VIRGO S A DE C V;)
VIDEO UNIVERSAL S A DE C V;)
SECINE S A DE C V;)
CUMBRE FILMS S A DEC V,)
Plaintiffs - Appellees - Cross Appellants)
)
v.)
)
AUTHORS RIGHTS RESTORATION)
CORPORATION INC; MEDIA RESOURCES)
INTERNATIONAL LLP; TELEVISION)
INTERNATIONAL SYNDICATORS INC;)
H JACKSON SHIRLEY, III,)
Defendants - Counter Claimants -)
Appellants - Cross Appellees)
)

Appeal from the United States District Court
for the Southern District of Texas
H-99-CV-734
David Hittner, US District Judge

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

OPINION

Wiener, Circuit Judge:

Plaintiffs-Appellees-Cross-Appellants Alameda Films, S.A., et al. (collectively, "the Plaintiffs") are 24 Mexican film production companies that sued Defendants-Appellants-Cross-Appellees Authors Rights Restoration Corp., Inc., Media Resources International, Television International

Syndicators, Inc., and H. Jackson Shirley, III (collectively, "the Defendants"), claiming copyright violations in 88 Mexican films that the Defendants distributed in the United States ("U.S."). Following a lengthy and vociferously disputed discovery process and the filing of numerous pre-trial motions, including eight motions filed by the Defendants for partial summary judgment, the district court eliminated from consideration seven of the 88 films in question and conducted a jury trial on the Plaintiffs' claims concerning the remaining 81 Mexican films. The jury returned a verdict for the Plaintiffs on all claims.

On appeal, the Defendants proffer myriad issues, but their principal complaints implicate the district court's (1) determining that production companies, such as the Plaintiffs, can hold copyrights under Mexican law, (2) permitting the Plaintiffs to recover damages for both copyright infringement and unfair competition, and (3) awarding attorney fees and costs to the Plaintiffs. In addition, the Defendants assert a litany of legal and factual errors purportedly committed by the district court during the trial. The Plaintiffs cross-appeal the district court's grant of partial summary judgment to the Defendants on the copyright status of seven of the 88 disputed films. We affirm the district court on all issues advanced on appeal, except for the quantum of attorneys' fees and costs awarded to the Plaintiffs, which we remand to the district court for a more precise determination, per the Johnson factors,[1] of the Plaintiffs' recoverable fees and costs incurred.

---

[1] *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

I.
FACTS and PROCEEDINGS

In the mid-1980s, the Defendants began distributing a variety of Mexican films in the U.S. This activity included 88 films that had been produced and released by the Plaintiffs in Mexico during that country's "golden age" of cinema, between the late-1930s and the mid-1950s. The Plaintiffs acknowledge that, at the time the Defendants began distributing these 88 films in the U.S., 69 of them had lost their copyrights here for failure of the authors to comply with U.S. copyright formalities, such as registering and renewing copyrights. According to the Plaintiffs, however, the legal status of these films changed in 1994 when the U.S. adopted the Uruguay Round Agreement Act ("URAA"),[2] thereby amending the 1976 Copyright Act.[3] The URAA eliminated many of the formalities previously required for copyrighting foreign works in the U.S, including registration and notice. The URAA also provided, effective January 1, 1996, for the automatic restoration of copyrights in various foreign works that had fallen into the public domain in the U.S. as a result of their foreign authors' failure to follow U.S. copyright formalities.[4]

Following Congress's 1994 adoption of the URAA, the Defendants began to obtain assignments of "rights" to the

---

[2] Pub. L. 103-465, 108 Stat. 4809 (1994).

[3] *See* 17 U.S.C. § 104A (codifying the portion of the URAA pertaining to copyright).

[4] 17 U.S.C. § 104A(a)(1)(A) & (h)(2)(A).

films from some individual "contributors," such as screenwriters and music composers. The Defendants did not, however, contact any of the Plaintiffs to obtain assignments or licenses to these films. The Defendants continued to distribute Mexican films in the U.S. after January 1, 1996, the date on which the U.S. copyrights were automatically restored in those films that were eligible for copyright restoration under the URAA.

In June 1998, the Plaintiffs filed suit in the U.S. District Court for the District of Columbia, alleging that the Defendants violated the Plaintiffs' (restored) U.S. copyrights in the 88 films here at issue. The Plaintiffs also alleged unfair competition by the Defendants in violation of the Lanham Act, as well as several common-law claims. The Defendants filed a counter-claim, and, a few months later, the case was transferred to the Southern District of Texas.

Following discovery, the Plaintiffs filed a motion for partial summary judgment that they were the "authors" of the films under Mexican law and thus held the U.S. copyrights that were restored under the URAA. Defendants filed two cross-motions for partial summary judgment, claiming that (1) under Mexican law, only natural persons, such as the individual contributors, and not artificial or juridical persons, such as film production companies, could be "authors"; and (2) seven of the 88 films produced by Plaintiffs were ineligible for copyright restoration under the URAA because these seven had fallen into the public domain in Mexico. The Defendants also filed a motion to dismiss the action and another for partial summary judgment.

The district court eventually denied all motions except one, granting the Defendants' second motion for partial summary judgment concerning the copyright status of the seven particular films that had fallen into the public domain in Mexico. In denying the Plaintiffs' motion for partial summary judgment, the district court acknowledged that interpretation of Mexican copyright law under 17 U.S.C. § 104A is a question of law for determination by the court.[5] On this question, the district court ruled that film production companies can hold copyrights -- a *derecho de autor* ("author's right") -- under the Mexican Civil Code. The district court reserved for trial, though, the disputed issue whether the Plaintiffs had in fact obtained Mexican copyrights in the 81 remaining films.

Following these rulings, the parties engaged in extensive motion practice. The Defendants filed, *inter alia*, another five motions for partial summary judgment, for a total of eight such motions. The Plaintiffs filed a motion for reconsideration of the denials of its motion for partial summary judgment and a motion to stay discovery. The district court denied all motions and set the case for trial.

In the ensuing jury trial, the district court permitted both sides to adduce testimony about the requirements of Mexican copyright law; and the district court instructed the jury that a

---

[5] *See* 17 U.S.C. § 104A(b) (noting that a "restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work"). *See also* FED. R. CIV. P. 44.1 (noting that a "court's determination [of foreign law] shall be treated as a ruling on a question of law").

film production company can be an "author" under Mexican copyright law for purposes of the URAA. The jury returned a verdict for the Plaintiffs, finding that (1) the Plaintiffs own the U.S. copyrights in the 81 films remaining in dispute, (2) the Defendants violated the copyrights in all 81 films, (3) the Defendants were guilty of unfair competition, and (4) the Defendants should pay the Plaintiffs' attorneys' fees and costs. The jury awarded the Plaintiffs copyright infringement damages of $1,512,000, unfair competition damages of $486,000, and attorneys' fees and costs of $984,000.

The Defendants filed several post-verdict motions, requesting that the district court (1) make its own findings of fact and conclusions of law, (2) grant a judgment as a matter of law, (3) grant a new trial, and (4) render a judgment notwithstanding the verdict. The district court denied all these motions and entered its Amended Final Judgment, which ordered, in addition to the damages awarded at trial, declaratory and equitable relief in favor the Plaintiffs. The Defendants and the Plaintiffs each timely filed notices of appeal.

II.
ANALYSIS

A. Can film production companies hold copyrights under Mexican law?

1. Standard of review.

We "review questions regarding foreign law *de novo*. This analysis is plenary."[6]

2. The "author's right" under Mexican law.

The URAA provides that a "[c]opyright subsists . . . in restored works, and vests automatically on the date of restoration."[7] The copyright in a restored work "vests initially in the *author* or *initial rightholder* of the work as determined by the law of the source country of the work."[8] The URAA thus establishes two categories for foreign copyright owners whose U.S. copyrights can be restored: (1) authors, and (2)

---

[6] *Karim v. Finch Shipping Co.*, 265 F.3d 258, 271 (5th Cir. 2001) (quoting *Banco de Credito Indus., S.A. v. Tesoreria Gen.*, 990 F.2d 827, 832 (5th Cir. 1993)). *See also Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 92 (2d Cir. 1998) (noting, in reviewing a district court's application of Russian copyright law under 17 U.S.C. § 104A, that a "[d]etermination of a foreign country's law is an issue of law").

[7] 17 U.S.C. § 104A(a)(1)(A).

[8] 17 U.S.C. § 104A(b) (emphasis added). *See also Films by Jove v. Berov*, 154 F. Supp. 2d 432, 448 (E.D.N.Y. 2001) (applying Russian copyright law to determine an "author" under § 104A(b)).

initial rightholders. The class of "initial rightholders" includes only owners of a copyright in a "sound recording,"[9] e.g., music composers; whereas, the class of "authors" includes all other creators of works originally copyrighted in foreign jurisdictions. Accordingly, the Plaintiffs can claim restored copyrights in their films under the URAA only if the Plaintiffs are considered "authors" under Mexican copyright law -- the law of the source country of the work.

The Defendants' principal contention on appeal is that the Plaintiffs, as film production *companies*, cannot be "authors" under the Mexican Civil Code. The Defendants maintain that the Mexican Civil Code permits only individuals, i.e., natural persons, to be "authors"; that the law does not permit corporations or other legal entities to be "authors" for purposes of claiming copyright entitlements. In contending that only natural persons can hold copyrights under Mexican law, the Defendants argue that we should never reach the restoration analysis under the URAA, because the Plaintiffs fail this threshold determination of qualification to hold copyrights under the "law of the source country of the work."[10]

In response, the Plaintiffs -- and the Government of Mexico, as *amicus curiae* -- urge that the Defendants' failure even to mention the Collaboration Doctrine of the Mexican Civil Code is telling. They note that in Mexican law, the Collaboration Doctrine covers various provisions regarding copyrights claimed by corporations, which necessarily create

---

[9] *See* 17 U.S.C. § 104A(h)(7).

[10] 17 U.S.C. § 104A(b).

copyrighted works only through the collaboration of individuals, *viz.*, their agents and employees. Thus, Article 1,198 of the 1928 Mexican Civil Code provides:

> The person or *corporation* that imprints or publishes a work made by various individuals with the consent of such individuals *will have the property in the entire work*, except each individual will retain the right to publish anew their own composition, independently, or in a collection.[11]

Subsequent amendments and re-enactments of Mexico's copyright laws in 1947 and 1956 specify that "whoever" creates a work with the "collaboration" of one or more other authors is entitled to the "author's right" (*derecho de autor*) in the entire work, as long as the contributors are mentioned in the work and are paid for their respective contributions.[12] Finally, the 1963 amendment of the Mexican copyright laws provides explicitly that "[p]hysical persons and *legal entities* who produce a work with the special and remunerated collaboration of one or more persons shall enjoy with respect to that work the author's right therein . . . ."[13]

---

[11] C.C.D.F. art. 1,197 (1928) (emphasis added). The relevant translations of the Mexican Civil Code were provided in the record excerpts.

[12] Ley Federal de Derecho de Autor art. 60 (1947); Ley Federal de Derecho de Autor art. 60 (1956).

[13] Ley Federal de Derecho de Autor art. 59 (1963) (emphasis added).

The Defendants devote a substantial portion of their briefs to discussing the role of Collective Bargaining Agreements ("CBA") in Mexico. The Defendants appear to believe that the Plaintiffs maintained before the district court (and continue to maintain on appeal) that they have copyrights in the films by virtue of having obtained assignments of the copyrights via the CBAs of the "natural persons" who worked for the production companies. If the Defendants harbor such a belief, they are mistaken. The CBAs that the Plaintiffs submitted into evidence were meant to prove only that the Plaintiffs' employees had been *paid*, thereby satisfying one of the requirements under the Collaboration Doctrine for the Plaintiffs, as production companies, to claim copyrights in the films that they produced.

The Defendants' insistence that an "author's right" under Mexican law vests only in a "natural person" is simply wrong. As *amicus*, the Government of Mexico explains that "throughout every iteration of its intellectual property laws, [Mexico] has recognized the producer as the rightful owner of the copyright of any film in its entirety." Provisions of the Mexican Civil Code identified by the Plaintiffs clearly support this position.[14] Thus, the district court correctly determined that the Plaintiffs can be and are "authors" under Mexican law, and thus can hold Mexican copyrights (*derecho de autor*) in the films that they have produced.

---

[14] *See* C.C.D.F. art. 1,197 (1928); Ley Federal de Derecho de Autor art. 60 (1947); Ley Federal de Derecho de Autor art. 60 (1956); Ley Federal de Derecho de Autor art. 59 (1963).

B. Are the seven films excluded by the district court eligible for restoration of their U.S. copyrights under the URAA?

The Defendants' second motion for partial summary judgment requested that the district court eliminate consideration of seven of the Plaintiffs' original 88 claims for copyright infringement, contending that the films had fallen into the public domain under Mexican copyright law, thereby precluding restoration of their U.S. copyrights under the URAA.[15] The district court granted that motion, ruling that the seven films had fallen into the public domain in Mexico and thus were ineligible for copyright restoration in the U.S.

1. Standard of review.

We review a grant of summary judgment *de novo*, applying the same standard as the district court.[16] A motion for summary judgment is properly granted only if there is no genuine issue as to any material fact.[17] In reviewing all of the evidence, we must disregard all evidence favorable to the moving party that the jury is not required to believe, and we should give credence to the evidence favoring the nonmoving

---

[15] The seven films are: *Besame Mucho*, *El Corsario Negro*, *Tentacion*, *Aguil[a] o Sol*, *Canaima*, *Humo En Los Ojos*, and *Pasiones Tormentosas*.

[16] *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998).

[17] Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

party.[18] The nonmoving party, however, cannot satisfy his summary judgment burden with conclusional allegations, unsubstantiated assertions, or only a scintilla of evidence.[19]

2. Registration requirements of Mexican copyright law.

Following the threshold determination whether one who claims a restored copyright is an "author" under the source country's law, the URAA predicates restoration of the work's U.S. copyright on its meeting three requirements: The work (1) is not in the public domain in the source country, (2) is in the public domain in the U.S. because of noncompliance with copyright formalities, lack of subject matter protection, or lack of national eligibility, and (3) was first published in the source country and was not published in the U.S. within 30 days after its initial foreign publication.[20] The district court determined that the seven films in question were not eligible for copyright restoration under the URAA because they had fallen into the public domain in the source country -- Mexico.

These seven films were produced and released between 1938 and 1946, and thus were governed by the copyright provisions of the 1928 Mexican Civil Code. Article 1,189 of that Code states:

---

[18] *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 151 (2000).

[19] *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

[20] § 104A(h)(6) (defining conditions for a "restored work").

> The author who publishes a work cannot acquire the rights granted to him by this title if he does not register the work within a period of three years. At the conclusion of this term, the work enters the public domain [if not registered].[21]

It is undisputed that the Plaintiffs never registered their copyrights in the seven films here at issue. In 1947, though, Mexico amended its copyright laws to eliminate the registration requirement. Article 2 of the 1947 *Ley Federal de Derecho de Autor* states that:

> [copyright] protection provided under this law to authors is conferred upon the simple creation of the work, without the necessity of deposit or registry previously [required] for its protection...[22]

Thus, for any works originally published in Mexico after the effective date of the abolition of that country's registration requirement (January 14, 1948), authors received automatic copyright protection.

The 1947 amendment of the Mexican copyright law also contained a safe harbor for any previously published works that had fallen into the public domain under the 1928 Code prior to the new law's effective date of January 14, 1948. Authors who had failed to register their works within three years following their publication, as required under Article 1,189 of Mexico's 1928 Code, thereby allowing such works

---

[21] C.C.D.F. art. 1,189 (1928).

[22] Ley Federal de Derecho de Autor art. 2 (1947).

to fall into the public domain, were given a six-month period of repose following the aforesaid effective date of the 1947 revision during which to register their works and thereby restore their copyrights.[23]

3. Is the restoration provision of the 1947 amendment applicable to the seven films at issue?

It is undisputed that four of the seven films that the district court ruled to have fallen into the public domain were released by the Plaintiffs less than three years before January 14, 1948, when the 1947 copyright provisions went into effect. On appeal, the Plaintiffs urge us to reverse the summary judgment concerning these four films, contending that the 1947 law, not the 1928 Code, is applicable. They direct us to that language of the 1947 copyright law stating that authors of works that (1) had been previously published under the 1928 Code, and (2) had fallen into the public domain *prior to* January 14, 1948, were accorded a six-month safe harbor during which to register these works and restore their copyrights. The Plaintiffs also note that any work created after the 1947 law went into effect received automatic copyright protection, with no registration requirement. Thus, urge the Plaintiffs, a temporal hiatus results from the effective dates of these two provisions of Mexico's 1947 copyright law for works that were published after 1945, but never registered: Works in this category had not yet lost their copyrights under the 1928 Code when the 1947 law went into effect; yet, the 1947 law did not provide for either an automatic copyright in, or a period of repose for registration

---

[23] *Id.*

of, works published during this short period.

Based on this analysis of the 1947 copyright law, the Plaintiffs first contend that the four films that they produced during this three-year gap between 1945 and 1948 should be granted copyright protection under the terms of the 1947 copyright law. In so claiming, however, the Plaintiffs are in essence asking us to rewrite Article 2 of Mexico's 1947 copyright law to apply retroactively its automatic copyright date three years earlier than is specified in the statute. This we decline to do. As the district court recognized in its summary judgment order, the automatic copyright provision expressly applies only to those works *first published on or after January 14, 1948*. Each of the Plaintiffs' four films were produced and released either in 1945 or 1946, and thus, by the plain words of the statute, do not qualify for the automatic copyright provision of the 1947 law.

The Plaintiffs alternatively maintain that canons of Mexican constitutional law support their interpretation of the automatic copyright provision as having retroactive effect, despite the statute's express terms to the contrary. They say that canons of Mexican constitutional law preclude retroactive application of statutes only when doing so would work to the detriment of a person's legal rights; retroactive application is actually sanctioned when it works in favor of both personal and property rights. The Plaintiffs thus conclude that retroactive application of the automatic copyright provision to works created after 1945 would advance Mexico's strong policy interest in favoring the moral rights of an author over the public interest.

We are not convinced by the Plaintiffs' alternative request that we judicially rewrite the 1947 statute to provide for automatic copyright protection as early as 1945, rather than the statute's express effective date of January 14, 1948. In fact, there is no reason for us to consider the canons of Mexican constitutional law in retroactive application of statutes because there is a completely reasonable explanation for the purported "gap" in the 1947 copyright law: There was simply no need to provide a safe harbor for works that remained within the three-year grace period for registration by or later than January 14, 1948, because authors of those works still had time remaining in which to register these works. The safe harbor was needed for works that had *already* fallen into the public domain: It was only the authors of these works who were given an explicit second bite at the apple. Works produced between January 1945 and January 1948 remained within the three-year grace period specified under the 1928 Code during which their authors could register them. Thus, Mexico's 1947 copyright law implicitly recognized that authors of works created within this three-year period still had time to register their works, as required under the terms of the 1928 Code, and thus were not in need of a grace period or safe harbor.

Simply put, the Plaintiffs should have realized in 1947 that they needed to register their copyrights in these four films before the 1928 Code's three-year grace period expired. It should have been obvious to them that, when the 1947 copyright provisions went into effect the following January, the new automatic copyright provisions would not apply to these four films. The Plaintiffs do not dispute the fact that they never registered the four films in question; neither is there evidence in the record indicating that they did so. By the

plain terms of the applicable 1928 Code, these films fell into the public domain in Mexico. Thus, they are ineligible for U.S. copyright restoration under the URAA.

4. Are the registration requirements of the 1928 Code applicable to all seven films?

The Plaintiffs propose yet another theory for holding that all seven disputed films retained their copyright protection and thus did not fall into the public domain after the 1928 Code's three-year grace period expired. They note that the 1928 Code's registration requirement applied only to works that were "published." The Plaintiffs quibble semantically that films are never "published"; rather, they are "released." Thus, argue the Plaintiffs, the literal terms of the 1928 Code's registration provision do not apply to films at all.

The Plaintiffs identify no Mexican canon of constitutional law or statutory interpretation that should guide our construction of the 1928 Code's registration requirement. Neither do they identify any Mexican court opinion or other authoritative Mexican interpretation of the 1928 Code's registration requirement of films vis-a-vis books or other "published" works. When there are gaps in foreign law, though, a U.S. court may use forum law to fill them.[24]

In this regard, U.S. courts have broadly interpreted the U.S. copyright statutes to cover new types of works that clearly fall within the ambit of their protection, even though

---

[24] *See Cantieri Navali Rieunitu v. M/V Skyptron,* 802 F.2d 160, 163 n.5 (5th Cir. 1986).

these new kinds of works are not covered literally by the terminology employed in the statutes at the time of their enactment.[25] Furthermore, it would be anomalous for us to exempt films from the *duties* imposed on authors by the 1928 Code while affording these same films the *benefits* provided to authors by the very same code. Accordingly, we are satisfied that the term "publishes," as broadly used in the 1928 Code, was intended to encompass all appropriate forms of *distributing copyrighted works to the public*. As, in the mid-1940s, films could be distributed to the public only by being "released" to theaters, it would be nonsensical to construe the 1928 Code's registration requirement as not applicable to the very films that benefit from the copyright protections afforded by the other provisions of that Code. We hold that the 1928 Code's registration requirements are applicable to films, necessarily including the seven disputed here.

---

[25] *See, e.g., Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (applying the 1976 Copyright Act to issues raised by VCRs, which were invented and distributed after the Act was enacted and are not mentioned in literal terms in the statute); *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975) (recognizing that the Copyright Act must be construed in light of its basic purpose "[w]hen technological change has rendered its literal terms ambiguous"). *See also Micro Star, Inc. v. FormGen, Inc.*, 154 F.3d 1107 (9th Cir. 1998) (applying the 1976 Copyright Act's provisions regarding "derivative works" to an innovative 1990s video game, Duke Nukem 3D, although this term originally applied to novels, films and other literary-based subject matter).

C. Do damage awards for both copyright infringement and unfair competition constitute a "double recovery"?

1. Standard of review.

The Defendants' effort to obtain a remittitur order from the district court is grounded in their contention that the Plaintiffs received a double recovery. We review a denial of remittitur for abuse of discretion,[26] and will only order a remittitur if we are "left with the perception that the verdict is clearly excessive."[27]

2. Does recovery for both copyright infringement and a *Lanham Act* violation constitute a clearly excessive verdict?

Following the jury verdict, the Defendants filed a motion for remittitur in the district court, insisting that the jury's award of damages for both copyright infringement *and* unfair competition constituted a "double recovery." The Defendants insist that the 1976 Copyright Act "preempts" claims for unfair competition. The district court denied this motion; yet, on appeal, the Defendants re-urge the same contention. Given this preemption of unfair competition claims, they maintain, a plaintiff cannot assert and recover on *both*. Accordingly, argue the Defendants, the district court should not have permitted the jury to award compensatory damages on *both*

---

[26] *Thomas v. Texas Dep't of Criminal Justice*, 297 F.3d 361, 368 (5th Cir. 2002).

[27] *Eiland v. Westinghouse Elec. Corp.*, 58 F.3d 176, 183 (5th Cir. 1995).

claims in this case: The damages are duplicative and thus excessive, requiring remittitur.

In response, the Plaintiffs rightly point out that the Defendants confuse allegations of unfair competition under the Lanham Act with such allegations under state tort law. This confusion is revealed in the Defendants' reliance on those of our cases in which we have held that the 1976 Copyright Act preempts *state* common-law claims for conversion, misappropriation, plagiarism, disparagement and defamation.[28] In this case, though, the Plaintiffs lodged a *federal* claim for unfair competition under the Lanham Act.[29]

The federal Copyright Act does not preempt the federal Lanham Act, or vice-versa. In fact, it is common practice for copyright owners to sue for both infringement under the 1976 *Copyright Act and* unfair competition under the *Lanham Act*. Such a litigation posture has never been disallowed by the courts on grounds of either preemption or impermissible double recovery.[30] We discern no basis in law or fact that supports the Defendants' contention that the district court

---

[28] *See Daboub v. Gibbons*, 42 F.3d 285 (5th Cir. 1995).

[29] 15 U.S.C. § 1125(a).

[30] *See, e.g., Veeck v. Southern Bldg. Code Cong. Int'l, Inc.*, 293 F.3d 791, 794 (5th Cir. 2002) (en banc) (noting that "SBCCI counterclaimed for copyright infringement, unfair competition and breach of contract"); *Lyons Partnership v. Giannoulas*, 179 F.3d 384, 387 (5th Cir. 1999) (noting that the plaintiff sued for "unfair competition, and trademark dilution under the *Lanham Act*, copyright infringement, and other claims").

abused its discretion in denying their request for remittitur.

D. Trial errors asserted by the Defendants.

The Defendants on appeal allege a litany of trial errors; yet, they offer no logically structured arguments in support of these assertions. The Federal Rules of Appellate Procedure require that an appellant's brief set out in its argument section the "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies."[31] "The purpose of the requirements in respect of briefs is to conserve the time and energy of the court and clearly to advise the opposite party of the points he is obliged to meet."[32] Beyond rote recitations of the standards of review and erroneous citations to case law,[33] the Defendants do not provide us with any basis -- either in their argument or by reference to the voluminous record -- for determining that the district court committed the proffered errors. Thus, "[i]n the absence of logical argumentation or citation to authority, we decline to reach the merits of these

---

[31] FED. R. APP. P. 28(a)(9)(A) (rev. ed. 2002).

[32] *United States v. Abroms*, 947 F.2d 1241, 1250-51 (5th Cir. 1991) (quoting *Thys Co. v. Anglo Cal. Nat'l Bank*, 219 F.2d 131, 133 (9th Cir. 1955)).

[33] For example, in claiming that the trial errors were cumulatively "unfair," the Defendants assert in their appellate brief that the "Constitution . . . does not authorize the issuance of patents (i.e. copyrights) for works in the public domain," and they cite a famous case in patent law. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966). Patents, however, are not copyrights, and thus patent cases are inapposite to copyright cases.

claims."[34]

---

[34] *Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 532 (5th Cir. 1996) (finding appellant failed the requirements of Fed. R. App. P. 28 because the "argument section fails to even mention §§ 1981, 1982, and 1985, let alone offer grounds for appeal, citations to authorities, statutes, and arguments in support"). *See also Randall v. Chevron USA, Inc.*, 13 F.3d 888, 911 (5th Cir. 1994), *rev'd on other grounds, Bienvenu v. Texaco, Inc.*, 164 F.3d 901 (5th Cir. 1999) (finding violation of Fed. R. App. P. 28 and refusing to review appeal of attorneys' fees award given failure of appellant to cite relevant authority or specific errors made by district court in its "bald assertion" that the district court erred); *Frazier v. Garrison I.S.D.*, 980 F.2d 1514, 1527 (5th Cir. 1993) (finding failure of appellate briefing requirements because appellant's "argument is nothing more than a bold, naked assertion that the district court erred"); *United States v. Martinez-Mercado*, 888 F.2d 1484, 1492 (5th Cir. 1989) (noting that "it is not the function of the Court of Appeals to comb the record for possible error, but rather it is counsel's responsibility to point out distinctly and specifically the precise matters complained of, with appropriate citations to the pages in the record where the matters appear"); *Kemlon Prods. and Dev. Co. v. United States*, 646 F.2d 223, 224 (5th Cir. 1981) (refusing to reach the merits of a party's claims when that party's brief addressed neither the merits of its own claims nor the reasoning of the district court).

E. Attorneys' fees and costs.

1. Standard of review.

We review an award of attorneys' fees for abuse of discretion.[35] "Although attorney's fees are awarded in the trial court's discretion, [in copyright cases] they are the rule rather than the exception and should be awarded routinely."[36]

2. Does evidence support the quantum of attorneys' fees and costs awarded to the Plaintiffs?

Under 17 U.S.C. § 505 and 15 U.S.C. § 1117, a court may allow a prevailing party in a copyright infringement and unfair competition lawsuit to recover reasonable costs and attorneys' fees.[37] In this case, the court allowed the jury to award attorneys' fees and costs to the Plaintiffs; and it did so in the amount of $984,000. The sole basis for the quantum of this award was the testimony of Steven Reilley, who had reviewed the files of the three law firms that represented the Plaintiffs in this action. Reilley testified that the law firms'

---

[35] *Hogan Systems, Inc. v. Cybresource Int'l, Inc.*, 158 F.3d 319, 325 (5th Cir. 1998).

[36] *McGaughey v. Twentieth Century Fox Film Corp.*, 12 F.3d 62, 65 (5th Cir. 1994) (quoting *Micromanipulator Co. v. Bough*, 779 F.2d 255, 259 (5th Cir. 1985)).

[37] 17 U.S.C. § 505 (permitting a prevailing party in a suit under the Copyright Act to recover "full costs" and "reasonable attorney's fees"); 15 U.S.C. § 1117 (permitting a plaintiff in a suit under the Lanham Act to recover for "the costs of the action").

files showed that the Plaintiffs incurred a total of *approximately* $900,000 in attorneys' fees and costs. Based only on this testimony, the jury awarded the Plaintiffs attorneys' fees and costs of $84,000 *more* than that amount.

On appeal, the Defendants urge that such an award by the jury is excessive and unreasonable. They point out that the Plaintiffs submitted no time records of their attorneys or documentation reflecting the rates charged or the billable hours spent in preparing for and litigating this case. The Plaintiffs respond that the award is appropriate, because Reilley's testimony was a sufficient basis for the jury to determine the proper amount of attorneys' fees. The Plaintiffs urge, in the alternative, that if we adjust the fee award, we not reduce it below $900,000, as that is the uncontested amount of fees and costs attested to by their witness.

The Plaintiffs claim to have incurred attorneys' fees and costs of $984,000, which is almost exactly one-half the total amount of compensatory damages awarded by the jury for copyright infringement and unfair competition.[38] In Lanham Act and copyright cases that are certain to involve large amounts of attorneys' fees and costs, considerably more evidence should be required from the prevailing party than the undocumented testimony of a single witness as to an admittedly *approximate lump-sum value* of the time spent by counsel working on a case. Without substantial, detailed record evidence, both testimony and documents, we cannot properly review the amount of the jury's award. The instant

---

[38] The jury awarded a total of $1,998,000 in damages -- $1,512,000 for copyright infringement and $486,000 for unfair competition -- compared to attorneys' fees of $984,000.

record is completely devoid of even the basic information needed to determine the propriety of the jury's award of fees and costs.[39] Even more problematical here is an award that *exceeds* by $84,000 the amount actually attested to by the Plaintiffs' lone witness. Without more, the award appears plainly arbitrary. After all, the function of fee-shifting statutes is to provide for actual reimbursement, not additional compensation. Under the circumstances, we have no choice but to vacate this part of the judgment and remand for redetermination.

On remand, the district court should require the Plaintiffs to provide documentation of the "full costs" and the "reasonable fees" that 17 U.S.C. § 505 and 15 U.S.C. § 1117 permit them to recover in their successful lawsuit under the 1976 Copyright Act and the Lanham Act. In fulfilling its mandate under these fee-shifting statutes, the district court should, among other considerations, apply the *Johnson* factors,[40] paying special attention to the four central factors: (1) the time and labor required, (2) the customary rate, (3) the amount involved and the results obtained, and (4) the

---

[39] The Plaintiffs cite to a Fifth Circuit case in which they contend that the district court summarily ordered attorneys' fees, which we allegedly affirmed. *See Hogan Systems, Inc. v. Cybresource Int'l, Inc.*, 158 F.3d 319, 325-26 (5th Cir. 1998). A closer reading of the opinion, however, reveals that we discuss and approve of the district court's "use of the *Johnson* factors" in this case. *Id.* at 325.

[40] *See Johnson*, 488 F.2d at 717-19 (setting out 12 factors for assessing the reasonableness of an award of attorneys' fees and costs).

experience, reputation and ability of the attorneys.[41]

III.
CONCLUSION

The district court conducted this complex case commendably, particularly given the difficulties inherent in interpreting and applying foreign law and the extensive motion practice of these vigorous litigants. We affirm all rulings of that court, with the exception of the quantum of attorneys' fees and costs awarded on the basis of the jury's findings. Thus, we vacate and remand only the portion of the district court's final judgment that awards attorneys' fees and costs to the Plaintiffs, and then only as to the quantum. Although awarding fees and costs *vel non* is clearly appropriate here under 17 U.S.C. § 505 and 15 U.S.C. § 1117, on remand, the district court should conduct a hearing -- paper or live -- and apply the *Johnson* factors to determine a reasonable sum to award the Plaintiffs for attorneys' fees and costs.

AFFIRMED in part; VACATED in part; REMANDED with instructions.

---

[41] *Copper Liquor, Inc. v. Adolph Coors Co.*, 624 F.2d 575, 583 (5th Cir. 1980).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. H-99-0734

[Filed March 31, 2000]

Alameda Films, S.A. de C.V., et al., Plaintiffs,	)
v.	)
H. Jackson Shirley, III, et al., Defendants.	)

ORDER

Pending before the court are the motion for partial summary judgment (Document #82) filed by Plaintiffs, Alameda Films, S.A. de C.V., et al., and the motion to dismiss (Document # 138), motion for summary judgment (Document #92), and motions for partial summary judgment (Document #132, 138) filed by Defendants, H. Jackson Shirley, III, et al. After reviewing the motions, the submissions on file, and the applicable law, the Court grants Defendants' second motion for partial summary judgment (Document #132) and denies the other motions.

District Court Order - 03/31/00

Background

Plaintiffs (the "Producers") are twenty-four Mexican film production companies that claim the copyrights in certain films made in Mexico over the past 70 years. The Producers contend that they own the rights to the films under Mexican law, and that their rights under Mexican law form the basis for their copyrights in the United States. The Producers brought this action alleging that their copyrights have been willfully infringed by Defendants, H. Jackson Shirley, Author's Rights Restoration Corporation, Inc., Television International Syndicators, Inc., and Media Resources International, L.L.P. (collectively, "Shirley"). The Producers seek a declaration that they own the copyrights in the films, and an injunction prohibiting Shirley from asserting any future claims to the copyrights.

Shirley responds that the rights in the films under Mexican law vested not in the Producers, but in the individual contributors to the films, such as the screenwriters, directors, actors, and music composers. Shirley contends that the contributors contractually assigned their rights to Shirley, effectively giving Shirley the United States copyrights in most of the films at issue in this case. The remaining films, Shirley argues, fell into the public domain in Mexico, rendering them ineligible for copyright protection in the United States.

Both sides have filed summary judgment motions, and Shirley has flied a motion to dismiss.

Films Subject to Restored Copyright Protection

Many of the films at issue in this case fell into the public domain in the United States when they were released without proper copyright notices. These films later became eligible for "restored" copyright protection under legislation enacted in 1994. *See* 17 U.S.C. § 104A. The parties assert competing claims to the restored copyrights.

Ownership of a restored copyright "vests initially in the author or initial rightholder of the work as determined by the law of the source county of the work." 17 U.S.C. § 104A(b).[1] Here, the films originated in Mexico, so the author of the films is determined under the law of Mexico. *See* 17 U.S.C. § 104[A](h)(8).[2] Mexican law recognizes an intellectual property right known as the *derecho de autor,* or "author's right." The *derecho de autor* confers the same types of rights held by the owner of a United States copyright, including the right to reproduce, distribute, perform, or display a work,

---

[1] The term "initial rightholder" pertains to sound recordings, not films. *See* 17 U.S.C. § 104A(h)(7).

[2] The Court notes that the application of foreign law to determine the ownership of a United States copyright in a foreign work presents an issue of law that is appropriately decided on summary judgment. *See* Fed. R. Civ. P. 44.1; *see also Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82 (2d Cir. 1988); *Servicios Comerciales Andinos v. General Electric del Caribe, Inc.*, 145 F.3d 463, 469 (1st Cir. 1998). The parties have submitted, and the Court has carefully reviewed, numerous affidavits from Mexican attorneys translating and interpreting the relevant Mexican law.

and to create derivative works. Ownership of the *derecho de autor* depends on the application of the "work made for hire" doctrine, which was incorporated into Mexican law in 1956.[3] Under this doctrine, individual contributors who were not paid for their contributions enjoy co-ownership of the *derecho de autor*. On the other hand, if the contributors worked as the producer's paid employees, then the producer holds the exclusive *derecho de autor*. Paid contributors do not acquire any interest in the film as a whole; they acquire only certain rights with respect to the particular aspects of the films on which they actually worked.

Shirley argues that the contributors who worked on the films at issue were not paid employees for purposes of the Mexican "work made for hire" doctrine, because they did not execute written employment agreements. Shirley relies on a 1996 Mexican law providing that a written agreement is necessary to create a valid employment relationship. However, all of the films at issue were created prior to 1996, and the status of the contributors is therefore governed by Mexican law as it existed prior to 1996. Until 1996, Mexican law recognized valid employment relationships even in the absence of a written employment agreement. Thus, the alleged absence of a written employment agreement is not dispositive.

The Producers contend that the contributors were paid for their work. They support this claim with documentation

---

[3] The "work made for hire" doctrine is also incorporated into copyright law in the United States. *See* 17 U.S.C § 201(b); *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989).

purporting to show that payments were made to certain individual contributors who worked on certain "representative" films. In addition, the Producers rely on certifications issued by the contributors' union stating that the contributors who worked on the "representative" films were paid in accordance with collective bargaining agreements. In response, Shirley relies on affidavits of individual contributors and their heirs stating that the contributors were not paid. Shirley also challenges the reliability of the union certifications on the ground that they were issued in June of 1999, years after the films at issue were created. The Court determines that genuine issues of material fact exist concerning which contributors, if any, were paid. Accordingly, the Court cannot determine on summary judgment whether the Producers are the exclusive holders of the *derecho de autor* and the restored copyrights under 17 U.S.C. § 104A.

Other Films Subject to Copyright Protection

Other films at issue in this case are not eligible for copyright restoration, because they do not meet the requirements set forth in 17 U.S.C. § 104A. For example, films that were released in the United States before they were released in Mexico are not eligible for copyright restoration.[4] Section 104A restores copyright protection only to films that, "if published, [were] first published in an eligible country and not published in the United States during the 30-day period

---

[4] Shirley contends that these films include *Tacos al Carbon, Dios Los Cria, La Ley del Monte, Juan Armenta el Repatriado, La Presidente Municipal, Duro Pero Segura,* [sic] *Ay Amor Como Me Has Puesto*, and *Quinceanera.*

following publication in such eligible country." 17 U.S.C. § 104A(h)(6)(D).[5] Mexico is an "eligible country"; the United States is not. *See* 17 U.S.C. § 104A(h)(3).

Films that never fell into the public domain in the United States are likewise ineligible for copyright restoration.[6] Copyright restoration is limited to films that are "in the public domain in the United States due to. . . noncompliance with formalities imposed at any time by United States copyright law, including . . . lack of proper [copyright] notice." 17 U.S.C. § 104A(h)(6)(C). Under the 1976 amendments to the United States copyright laws, films that were first published in the United States between January 1,1978, and February 28, 1988, did not fall into the public domain, even if they were released without a proper copyright notice, so long as the owner registered the films within five years and made a reasonable effort to attach a proper copyright notice to all existing copies. *See* Pub. L. No. 94-553, 90 Stat. 2598 (amending 17 U.S.C. § 405). Under the 1988 amendments, films that were first published in the United States after March 1, 1989, did not fall into the public domain, even if they were released without a proper copyright notice, and even if they were never registered. *See* Pub. L. No. 100-568, 102 Stat. 2753 (amending 17 U.S.C. § 405).

---

[5] "Publication" of a film occurs when prints of the film are made available to theater operators for public exhibition. *See American Vitagraph, Inc. v. Levy*, 659 F.2d 1023, 1028 (9th Cir. 1981).

[6] The Producers contend that these films include *Ladrones de Tumbas* and *Sinverguenza Pero Honrado*.

Some of these films, although not eligible for restored copyright protection, may nevertheless be subject to a United States copyright that attached when the films were first published. However, the ownership of such copyrights cannot be determined on summary judgment. The ownership of the copyrights depends on the ownership of the intellectual property rights in the country with the most significant relationship to the films. *See Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 90 (2d Cir. 1998). Here, the Producers and the contributors reside in Mexico, and they created the motion pictures in Mexico, so the Court applies the law of Mexico. As noted above, the Court cannot determine who holds the *derecho de autor* under Mexican law because there are genuine issues of material fact concerning which, if any, individual contributors worked as the Producers' paid employees.

Films Not Eligible for Copyright Protection

Finally, Shirley seeks partial summary judgment on the ground that the Producers cannot hold a United States copyright in seven films that were first published in Mexico, and that allegedly fell into the public domain in Mexico.[7] Films that fell into the public domain in Mexico are not eligible for a restored copyright, because Section 104A applies only to a film that "is not in the public domain in its source country through expiration of term of protection." 17 U.S.C. § 104A(h)(6)(B). Nor are such films otherwise eligible for copyright protection in the United States, because

---

[7] The seven films are *Besame Mucho, El Corsario Negro, Tentacion, Aguil[a] o Sol, Canaima, Humo En Los Ojos,* and *Pasiones Tormentosas.*

the existence of a copyright in the United States depends on the existence of intellectual property rights in Mexico. *See Itar-Tass*, 153 F.3d at 90.

The seven films at issue werereleased between 1938 and 1946. At the time the films were released, ownership rights were determined under article 1189 of Mexico's Civil Code of 1928. The 1928 law extended ownership rights only if the work was registered within three years of its first publication. If the work was not registered, it fell into the public domain. The 1928 law was superceded in 1947 by a new enactment that allowed the creators of works in the public domain to recapture their ownership interest by registering the work within six months after the enactment of the 1947 law. The Producers have not presented any summary judgment evidence establishing that they registered the seven films in Mexico, either to obtain original ownership rights under the 1928 law or a restored right under the 1947 law. Therefore, the films fell into the public domain in Mexico and cannot be copyrighted in the United States.

The Producers argue that four of the seven films did not fall into public domain because the three-year registration period under the 1928 law had not yet expired with respect to these films when the registration requirement was abolished on January 14, 1948. This argument is without merit. For works published prior to January 14, 1948, owners could obtain copyright protection only by registering the works -- within three years after publication under the 1928 law, or within six months after the effective date of the 1947 law. The 1947 law abolished the registration requirement only for works that were first published on or after January 14, 1948.

The Producers also argue that the other three films are protected under the 1928 law because the individual contributors registered their contributions to the films. However, as the Producers have explained to this Court, before Mexico adopted the "work made for hire" doctrine in 1956, the individual contributors could not own, or even co-own, the *derecho de autor*. Thus, the rights in each film as a whole could not have been preserved by the individual contributors, and the seven films fell into public domain in Mexico. Shirley is entitled to summary judgment with respect to these seven films.

Conclusion

Based on the foregoing, it is hereby

ORDERED that Plaintiffs' motion for partial summary judgment (Document #82) is hereby DENIED. It is further

ORDERED that Defendants' motion for summary judgment (Document #92) is hereby DENIED. It is further

ORDERED that Defendants' second motion for partial summary judgment (Document #132) is hereby GRANTED. It is further

ORDERED that Defendants' motion to dismiss and third motion for partial summary judgment (Document #138) is hereby DENIED.

SIGNED at Houston, Texas, this 30 day of March, 2000.

/s/_____
DAVID HITTNER
United States District Judge

APPENDIX D

No. 01-20869

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ALAMEDA FILMS, S.A. DE C.V.; CIMA FILMS, S.A. DE C.V.; CINEMATOGRAFICA FILMEX, S.A. DE C.V.; CINEMATOGRAFICA JALISCO, S.A. DE C.V.; CINEMATOGRAFICA SOL, S.A. DE C.V.,

Plaintiffs - Counter Defendants - Appellees - Cross Appellants,

CINEPRODUCCIONES INTERNATIONAL, S.A. DE C.V.; CINEVISION, S.A. DE C.V.; DIANA INTERNACIONAL FILMS, S.A. DE C.V.; FILMADORA MEXICANA, S.A. DE C.V.; GAZCON FILMS, S.A. DE C.V.; GRUPO GALINDO, S.A. DE C.V.; MIER, S.A. DE C.V.; ORO FILMS, S.A. DE C.V.; PELICULAS Y VIDEOS INTERNACIONALES, S.A. DE C.V.; PROCINEMA, S.A. DE C.V.; PRODUCCIONES EGA, S.A. DE C.V.; PRODUCCIONES GALUBI, S.A. DE C.V.; PRODUCCIONES MATOUK, S.A. DE C.V.; PRODUCCIONES ROSA PRIEGO, S.A. DE C.V.; PRODUCCIONES TORRENTE, S.A. DE C.V.; PRODUCCIONES VIRGO, S.A. DE C.V.; VIDEO UNIVERSAL, S.A. DE C.V.,

Plaintiffs - Appellees - Cross Appellants

v.

AUTHORS RIGHTS RESTORATION CORPORATION, INC.; MEDIA RESOURCES INTERNATIONAL, LLP; TELEVISION INTERNATIONAL SYNDICATORS, INC.; H. JACKSON SHIRLEY, III,

Defendants - Counter Claimants -
Appellants - Cross Appellees.

Appeal from the United States District Court
for the Southern District of Texas, Houston Division

BRIEF OF *AMICUS CURIAE*
THE GOVERNMENT OF MEXICO
in Support of Appellees and Cross-Appellants
[seeking affirmance as to primary appeal and reversal as to cross-appeal]

P. MICHAEL JUNG
Strasburger & Price, L.L.P.
4300 Bank of America Plaza
901 Main Street
Dallas, Texas 75202
(214) 651-4300

ATTORNEY FOR *AMICUS CURIAE*

TABLE OF CONTENTS

Table of Contents i

Table Of Authorities iv

Statement as to Identity, Interest, and Authority *of Amicus Curiae* 1

Introduction: Importance of this Case to Mexico 2

Summary of the Argument 2

Argument 5

I. MEXICO EMBRACED FILM AT ITS INCEPTION, AND THE MEXICAN GOVERNMENT'S PARTNERSHIP WITH THE FILM INDUSTRY FOLLOWED SUIT 5

A. The Crucial Role of the Producer in the Mexican Film Industry 7

B. Government Recognition of the Importance of Film to the Mexican Economy Existed Virtually at Film's Inception and Continues Today 10

II. MEXICO'S GOLDEN AGE OF CINEMA DESERVES THE BROADEST PROTECTION AVAILABLE UNDER MEXICAN LAW 13

A. The Films of this Era Are Critical Components of Mexico's Cultural History 13

B. The Mexican Film Industry Is Booming Again 14

III. THE SEVEN MOTION PICTURES AT ISSUE DID NOT ENTER THE PUBLIC DOMAIN UNDER THE 1928 MEXICAN CIVIL CODE 16

A. The URAA Restoration Provisions Followed the Original NAFTA Legislation Aimed Specifically at Protecting Vintage Mexican Films 16

B. Because No Film Lost Copyright Protection in Mexico Through Expiration of Term of Protection, No Public Domain Issue Should Arise 18

C. *Besame Mucho, Canaima, Humo en los Ojos*, and *Pasiones Tormentosas* Are Not Subject to the 1928 Civil Code's Registration Requirement 19

D. The 1928 Civil Code– With No Specific Provisions for Motion Pictures– Should Not be Used to Destroy Longstanding Ownership Rights in the Even Older Films *Aguila o Sol, El Corsario Negro*, and *Tentación*. 20

1. The 1928 Civil Code Did Not Envision the New Art Form of Film and Made No Provision for It 20

2. Because a Technological Change Renders the 1928 Civil Code Inappropriate for Film, Public Policy Should Be Considered 21

E. Policy Considerations Dictate Holding These Films Are Not in the Public Domain in Mexico 24

Conclusion 25

Statement of Immunity 25

Certificate of Service 27

Certificate of Compliance 29

Appendices: **Tab**

Jorge Castañeda, Secretary of Foreign Affairs of Mexico, Speech to the French Attachés for Culture and Cooperation (July 23,2001) 1

Letter from Lic. Julio Campuzano Reyes Retana, Centra para el Estudio y la Difusion de la Propiedad Intelectual, A.C., to Lic. Juan Manuel Gómez Robledo, Consultor Jurídico, Secretaría de Relaciones Exteriores (June 10, 2002) 2

Letter from C. Agustin Lara Alvarado, Secretario General, Sindicato de Trabajadores de la Industria Cinematografica, Similares y Conex os de la R.M., Seccion 49, to Lic. Juan Manuel Gómez Robledo, Consultor Jurídico, Secretaría de Relaciones Exteriores (July 18, 2002) 3

Letter from Mtra. Marcela Fernández Violante, Secretaria General, Sindicato de Trabajadores de la Producción Cinematográfica de la República Mexicana, to Lic. Juan Manuel Gómez Robledo, Consultor Jurídico, Secretaría de Relaciones Exteriores (July 19, 2002) 4

TABLE OF AUTHORITIES

Cases **Page**

American Geophysical Union v. Texaco Inc.,
60 F.3d 913 (2d Cir. 1994) 22

Cantieri Navali Riunitu v. M/V Skyptron,
802 F.2d 160 (5th Cir. 1986) 22

Sega Enterprises Ltd. v. Accolade, Inc.,
977 F.2d 1510 (9th Cir. 1992) 22

Sony Corp. v. Universal City Studios, Inc.,
464 U.S. 417 (1984) 22

Twentieth Century Music Corp. v. Aiken,
422 U.S. 151 (1975) 22

"Maria Luna Vda. De Rangel,"
132 S.J.F. 304 (1957) 23

"Salvador Bristain Ivelles,"
132 S.J.F. 499 (1956) 23

"[anonymous],"
131 S.J.F. 599 (1957) 23

Constitutional Provisions

Mex. Const. art. 14 23

Statutes

17 U.S.C. § 104A 5

17 U.S.C. § 104A(h)(6)(B) 18

C.C.D.F. art. 1,189 (1928) 19

Rules of Court

5th Cir. R. 29.2 19

Secondary Sources

Tessie Borden, *Mexican films make box-office inroads at home, in U.S.*, Ariz. Republic, Apr. 5, 2002 14

Traci Carl, *Change Noted in Mexican Films,* AP (Mexico City), June 24, 2001 (available at www.sanchez-associates.com/articles/mexfilm.html) 15

Jorge Castañeda, Secretary of Foreign Affairs of Mexico, Speech to the French Attachés for Culture and Cooperation (July 23,2001) (available at www.sre.gob.mx/e-bulletins/2001/jul/discursos/D-03-07.htm) 3, 12

Eduardo de la Vega Alfaro, *Origins, Development and Crisis of the Sound Cinema (1929-1964),* in *Mexican Cinema* (Ana M. López trans., Paulo Antonio Paranaguá ed., 1995) . 7

Aurelio de los Reyes, *The Silent Cinema,* in *Mexican Cinema* (Ana M. López trans., Paulo Antonio Paranaguá ed., 1995) 6, 7

Carlos Gutiérrez, *¡Acción! Mexican Cinema Now (The Newest "Nuevo Cine Mexicano")*, Cinema Tropical Newsletter (2002) (available at www.cine-matropical.com/newsletter/200202/newnewmexicancinema.html) 14

John W. Hazard, Jr., *Copyright Changes under the Uruguay Round Agreements Act,* Copyright L. Bus. & Prac. § 1.10 (rev. ed.) 17

Introduction, in *Mexperimental Cinema* (1998) (available at www.geo-cities, com/S oHo/Museum/1904/ecatalog 1 .html) 13

Alexander Lindey & Michael Landau, 5 *Lindey on Entertainment, Publishing and the Arts* App. D (2d ed. 2001) 17, 18

Jennifer Liu, *A New Golden Age for the Silver Screen? The Mexican Film Industry* (available at www.fas.harvard.edu/~drclas/publications/revista/-mexico/Liu.html) 14

Ignacio Durán Loera, *Preface to the English Edition,* in *Mexican Cinema* (Ana M. López trans., Paulo Antonio Paranaguá ed., 1995) 5

Sean Logan, *Cine Mexicano,* Prism (Oct. 1995) 13

Carl J. Mora, *Mexican Cinema: Reflections of a Society 1896-1988* (1989) 10, 11,21

Carlos Monsiváis, *Mythologies,* in *Mexican Cinema* (Ana M. López trans., Paulo Antonio Paranaguá ed., 1995) . 13, 14

Motion Picture Inventions (available at www.inventors.about.com/library/-inventors/blmotionpictures.htm) 5

Nimmer on Copyright § 9A.04 (2002) 17

Alexander Pineda & Paulo Antonio Paranaguá, *Mexico and its Cinema,* in *Mexican Cinema* (Ana M. López trans., Paulo Antonio Paranaguá ed., 1995) 5

Rene Rodriguez, *Stardom Strikes Amores Perros Actor: Gael Garcia Bernal says he's hungry for movies about his native Mexico,* Hispanic Magazine.com (May 2001) (available at www.hispaniconline.com/magazine/-2001/may/Cultura/film.html) 14

Eric J. Schwartz, *Protecting and Exploiting U.S. and Canadian Intellectual Property Abroad in a Technologically Changing World Economy - A U.S. Perspective,* 25 Can.-U.S.L.J. 97 (1999) 16

Sentinel Wire Services, *Mexican cinema icon Maria Felix dies at 88* (Apr. 9, 2002) (available at www.hollandsentinel.com/ns- search/stories/040902/-new_040902030.shtml?NS-search-set=/3 d36b/aaaa0696436be 11 &NS-doc-offset=0&) 13

Lionel S. Sobel, *Back from the Public Domain: Congress Restores Copyrights to Many Foreign Works,* 17 Ent. L. Rep. 3 (1995) 17

Katherine C. Spelman, *Current Developments in Copyright Law 1997*, 497 PLI/Pat 487 (1997) 17

Tomás Pérez Turrent, *The Studios*, in *Mexican Cinema* (Ana M. López, trans., Paulo Antonio Paranaguá ed., 1995) 7, 10

STATEMENT AS TO IDENTITY, INTEREST, AND AUTHORITY OF AMICUS CURIAE

The Government of Mexico files this brief to illuminate certain important points of Mexican law. The brief is filed for two specific purposes: (i) to confirm the correctness of the district court's conclusion that under Mexican law a film producer is the "author" of, and therefore holds the copyright to, the entire work; and (ii) to show that under Mexican law, seven films in particular *(Besame Mucho, Canaima, Humo en los Ojos, Pasiones Tormentosas, Aguila o Sol, El Corsario Negro,* and *Tentación*) are not in the public domain in Mexico and therefore are entitled to restored copyright protection in the United States.

Because of the vast number of films that were made during a unique time in Mexico's cinematic history, from 1928 through 1942, an era known as Mexico's "Golden Age" of cinema, any incorrect legal conclusion on public domain has widespread harmful consequences for an industry that has figured prominently in Mexico's history, politics, and economy for more than one hundred years.

The filing of this brief has been authorized by the Secretaría de Relaciones Exteriores (Foreign Ministry) of the Republic of Mexico.

INTRODUCTION: IMPORTANCE OF THIS CASE TO MEXICO

This case involves 88 Mexican films and a critical dispute as to their ownership. The dispute is critical because it raises issues that touch on the political and economic forces that

drove the United States Congress, under the auspices of the North American Free Trade Agreement ("NAFTA") and the General Agreement on Tariffs and Trade ("GATT"), to grant unprecedented copyright restoration rights to film producers in Mexico and Canada.

The dispute is critical to the Government of Mexico because the films at issue constitute a vital part of Mexico's acclaimed film history, Mexico's cultural patrimony, and, by implication, Mexico's foreign policy goals. Mexican law provides ample protection for seven films in particular, which the district court held to be in the public domain in Mexico. As a result, seven classic films that figure in Mexico' s Golden Age of film-making are no longer within the control of the Mexican production companies for release or distribution in the United States. Mexican law and public policy considerations provide considerable authority that these films never fell into the public domain in Mexico.

SUMMARY OF THE ARGUMENT

A country's ability to project itself on a world stage on its own terms, not through the biased eyes of a beholder, is an important hallmark of political, cultural, and economic independence. This notion finds expression in something as meaningful as Mexico's current foreign policy goals. As Mexico's Secretary of Foreign Affairs, Jorge Castañeda, has publicly stated:

> [I]t is necessary to take actions to prevent the gradual development of an increasingly uniform culture that puts at risk the diversity of traditions and cultures. This demands that the [Mexican] State adopt strategies

> to assure the continued vitality of the national culture by supporting cultural expressions in the...cultural industries in general, in collaboration with the private sector.[1]

In fact, the government of Mexico has embraced this principle for ***decades***. It has done so even more prominently under the current administration. In short, matters deemed "cultural" figure prominently in Mexico' s foreign policy. In his speech to the French attachés for Culture and Cooperation on the specific issue of "cultural diplomacy," for example, Secretary Castañeda stated:

> [W]e are convinced that culture has been– and without a doubt will continue to be–the best letter of introduction that our country can have in the world, which is why we have decided to dedicate more effort to this task. Furthermore, we will do this convinced that Mexico's new position as a fully democratic nation demands that we spread throughout the world an image of our country that corresponds both to the dynamic, pluralistic and democratic nature of our society and to the rich Mexican cultural heritage. ...
>
> ...

---

[1] Jorge Castañeda, Secretary of Foreign Affairs of Mexico, Speech to the French Attachés for Culture and Cooperation (July 23, 2001) (available at www.sre.gob.mx/e-bulletins/2001/jul/discursos/-D-03-07.htm), attached to this brief as Appendix 1.

> ***To achieve this, we want Mexican culture to become a keystone of our foreign policy.***[2]

To ensure Mexico's right as a sovereign nation to further its cultural goals, it is imperative that Mexican law be correctly interpreted and applied. The district court incorrectly concluded that seven films in particular had fallen into the public domain in Mexico. The seven films affected by this erroneous interpretation of Mexican law figure prominently in what is widely recognized as Mexico's "golden age" of film making. They form an important link in the evolution of Mexico's voice on the world stage through cinema, as that art form has been used to express a people's burgeoning sense of creativity, self-awareness, and political power. Mexican law governing these valuable components of Mexico's cultural patrimony must be properly interpreted to further a vital aspect of Mexico's current foreign and cultural policy goals.

The Government of Mexico respectfully requests that this Court affirm the trial court's conclusion that the producer of a film is its author under Mexican law. The Government of Mexico further requests that thisCourt conclude that Mexican law dictates that these seven films never fell into the public domain. Because they never became part of the public domain in Mexico in the first place, they were entitled to have their United States copyrights restored, as permitted under the Uruguay Round Agreements Act ("URAA"), 17 U.S.C. § 104A.

---

[2] *Id.* (emphasis added).

ARGUMENT

I. MEXICO EMBRACED FILM AT ITS INCEPTION, AND THE MEXICAN GOVERNMENT'S PARTNERSHIP WITH THE FILM INDUSTRY FOLLOWED SUIT.

Cinema "took root in Mexico from the earliest times." Ignacio Durán Loera, *Preface to the English Edition*, in *Mexican Cinema* ix (Ana M. López, trans., Paulo Antonio Paranaguá ed., 1995) (hereinafter cited as *Mexican Cinema*). The invention of Louis and Auguste Lumière – the *"Cinématographe"*– that debuted in Lyon, France in March 1895[3] made its way to Mexico in 1896, with the first public screening in the capital city on August 14, 1896. Alexander Pineda & Paulo Antonio Paranaguá, *Mexico and its Cinema,* in *Mexican Cinema* 15 (1995). The device that caused such a stir looks like nothing more than a black box:[4]

[picture omitted for purposes of this appendix]

Although those debut screenings were French imports, just *days* later Mexican audiences were able to see a *Mexican,* rather than a foreign, reality reflected on the screen. Short, documentary-type films in the style of the original French

---

[3] Although the Lumière brothers frequently receive credit for creating the first motion picture camera, other similar machines had been invented earlier. *See Motion Picture Inventions* (available at www.inventors.about.com/library/inventors/blmotionpictures.htm).

[4] pictures obtained from website at www.alchemists.com/visual_alchemy/lumiere.html.

screenings had been shot at Chapultepec castle for then-Mexican leader General Porfirio Díaz, and formed part of these initial screenings in Mexico City. *See* Aurelio de los Reyes, *The Silent Cinema*, in *Mexican Cinema* 63. This filmed-in-Mexico footage (although filmed ***by*** the Lumière cameramen) included such reality-based "films" as *"Moving Group of General Diaz and Some Members of his Family"*[5] and *"General Diaz Taking a Walk in the Chapultepec Forest."*[6] *See id.* The stage was set for Mexican audiences to appreciate film as a medium they could make their own.

A. The Crucial Role of the Producer in the Mexican Film Industry

Even in these early days of film's debut in Mexico, ambitious and foresighted persons were pioneering the role of the producer. For example, Ignacio Aguirre is credited with purchasing the Lumière representatives' equipment when they left Mexico in 1897. Aurelio de los Reyes, *The Silent Cinema,* in *Mexican Cinema* 63. His goal was to begin his own production venture, but he lacked monies or materials to produce new films. *See id.* Another nascent production company owned by Guillermo Becerril was started in 1897 in Guadalajara. *Id.* Because curiosity was growing so rapidly among the Mexican populace for this medium, by 1898

---

[5] *"Grupo en movimiento del General Díaz y de algunas personas de su familia."* Translation of title in Aurelio de los Reyes, *The Silent Cinema,* in *Mexican Cinema* 63.

[6] *"El General Díaz paseando por el bosque de Chapultepec."* Translation of title in Aurelio de los Reyes, *The Silent Cinema,* in *Mexican Cinema* 63.

producers were making a "rapid" appearance on the scene, more so in Mexico's interior, interestingly, rather than in the capital. *Id. See also* Tomás Pérez Turrent, *The Studios,* in *Mexican Cinema* 134 (noting that typical dominance of Mexico City over the provincial cities did not occur in cinema "as a direct consequence of the nomadism of the late 1800s and early 1900s" in which traveling camera operators traveled throughout the country "to document and to present events"). One of the first efforts to actually organize a group of producers can be found in 1934, when a small "group of enthusiasts" organized what they called the *"Asociación de Productores de Películas"* (Association of Film Producers). Eduardo de la Vega Alfaro, *Origins, Development and Crisis of the Sound Cinema (1929-1964)*, in *Mexican Cinema* 79, 84.

The evolution of film in Mexico is therefore closely tied to the origins of the entity known as a producer. This historical fact represents a fundamental truth that underlies Mexican copyright law: that without a producer to organize, underwrite, and manage the massive endeavor of film-making, there could be no film and no film industry. Thus, it should come as no surprise that a country that embraced this medium so rapidly and so early, and had ***producers*** involved so rapidly and so early, would recognize the producer' s right to a copyright in the ***entire*** work. Similarly, it is not surprising that Mexico would ultimately recognize in the Author's Right Law of 1947 (the *Ley Federal de Derecho de Autor),* a moral right in a creative work, that protects it from improper third-party interference without any technical requirements.

Unlike a writer or a musician who contributes one distinct and identifiable piece of work to the ultimate production, the

producer has nothing to show for his creative endeavor in the process *except for* the entire work. The producer's talent and expertise lies in the management of each and every discrete part of a film, from beginning to end. Testimony at trial graphically made this point. *See, e.g.*, 48 Tr. 994-96.

Mr. Carlos Vasallo, a representative of plaintiff production company Video Universal, S.A. de C.V., explained in vibrant detail the producer's role, who manages the entire film-making process:

> A producer of the movie does almost everything. Normally, when I was home...an idea bring to my mind, when the idea bring to my mind, I call a writer and I say, "Hey, I have an idea. Let's come here. Let's talking about it. Let's see come a movie from this."
>
> If we agree, I pay him to do an outline. If I like the outline, I write a script. If the script is made, and I like it, I decide to go on with the movie. This mean[s] I call a director, and say to the director, "I have this script. Let's see if you like it," and we do a movie, okay?"
>
> [If t]he director like[s] it, we call the actors and we say, "Let's see how much money can I raise to do this movie." I pull [it] altogether. If it's the budget come right, [I] have to find the location, find everything, camera, cinematographicwork, location, ***everything***.
>
> ....

> And we shoot the movie. [W]hen the movie, is finished, the director is out, we edit[ ] the movie, when the movie is edited [and] everything is put together. We take the music...we listen [to] the music, and when the movie is ready, the movie is [mine to] keep ....
>
> ....
>
> If he's not the producer, there's no movie, because he's the only one who takes the money and the value to do the movie. He's the only one who [is] acting as the motor, the brain to do the movie. You cannot do a movie without the producer. ***You can do the movie without all the other people, but not without the producer.***

48 Tr. 994-95,996 (emphasis added).

It is no wonder that Mexico, throughout every iteration of its intellectual property laws, has recognized the producer as the rightful owner of the copyright of any film in its entirety. *See, e.g.*, 44 Tr. 554-61. The district court properly ascertained that issue of Mexican law.[7]

---

[7] Attached to this brief as Appendices 2-4 are letters from the Center for the Study and Diffusion of Intellectual Property and from two of Mexico's cinematographic workers' unions confirming those entities' understanding that the producer is the holder under Mexican law of the copyright in a motion picture as an integrated work.

B. Government Recognition of the Importance of Film to the Mexican Economy Existed Virtually at Film's Inception and Continues Today.

The Mexican government has been a fervent supporter of the film industry because of its beneficial effects for the Mexican economy in general and thus for all Mexican people. Even when the Lumière employees made their first screening in Mexico City in 1896, Mexico's leaders recognized the significance of this art form.

Indeed, General Diaz himself, for example, was an early fan of the medium, as were many of his colleagues who saw the cinema "as a scientific instrument capable of reproducing visible reality undistorted." *See* Tomás Pérez Turrent, *The Studios,* in *Mexican Cinema* 133 (describing Porfirio Díaz as "a film enthusiast from the outset").

In 1942, for example, the government established the Banco Cinematográfico to ensure the industry had a solid financial basis on which to grow. *See* Carl J. Mora, *Mexican Cinema: Reflections of a Society 1896-1988* 59 & 77 (1989). The Banco Cinematográfico's clear purpose was to "centralize the sporadic activities of small, undercapitalized producers." *Id.* at 59. But it was selective as well, selecting in its first year of existence just nine out of thirty production companies to receive credits of five million pesos. *Id.* This explicit support for the film industry represents the government's recognition that not only was this industry important to the country in cultural and artistic terms, but it also provided a growth industry for Mexico at large. *See id.* at 52. Indeed, the Banco Cinematográfico, and the government support it represented, is credited with ensuring

that Mexican cinematic production in the tumultuous 1950s and 1960s remained in ***Mexican*** rather than foreign hands.[8] *Id.* at 101.

That the government had begun to recognize in the 1940s the value of the industry to the country as a whole is reflected in the laws Mexico passed in the 1940s to protect the industry. For example, in 1946 a law was enacted to exempt the movie industry from income taxes. *Id.* at 76. The Author's Right Law of 1947 then entered the picture, as explained in the Film Owners' brief. (Film Owners' Brief at 44-45). A comprehensive cinematic law would finally be passed in 1949. Carl J. Mora, *Mexican Cinema: Reflections of a Society 1896-1988* 76 (1989).

The current administration recognizes that cultural dissemination, which occurs most powerfully through the visual language of film, has effects throughout many public sectors: "tourism, education, and even commercial and financial activities."[9]

---

[8] To complete the historical presentation of the Banco and its role in the Mexican film industry, it should be noted that the Banco was dissolved in early 1979 as part of President López Portillo's (1976-1982) massive overhaul and radical change in state film making policies. The role filled by the Banco and its personnel was given to the Directorate of Radio, Television, and Cinema ("DRTC"), which was headed by Margarita López Portillo. Carl J. Mora, *Mexican Cinema: Reflections of a Society 1896-1988* 137-38 (1989).

[9] *See* Speech given by the Secretary of Foreign Affairs of Mexico, Jorge Castañeda, to the French Attachés for Culture and Cooperation (July 23, 2001) (available at www.sre.gob.mx/e-bulletins/2001/jul/discursos/D-03-07.htm), attached to this brief as

In fact, Mexico's Foreign Ministry has indicated specific steps it is taking for a "systematic and coordinated effort" to multiply the successes that Mexico has already had with cultural exports ***such as movie making.***

Those measures include:

- Strengthening the administrative structure for cultural policy;
- Reforming and strengthening the network of Mexican cultural institutes worldwide;
- ***Increasing the participation of the private sector in cultural promotion abroad;*** and
- Giving cultural activities more flexibility and differentiation.[10]

Thus, the tradition of government support for this industry continues because it fulfills a larger public good.

Appendix 1.

[10] *Id.* (emphasis added).

II. MEXICO'S GOLDEN AGE OF CINEMA DESERVES THE BROADEST PROTECTION AVAILABLE UNDER MEXICAN LAW.

A. The Films of this Era Are Critical Components of Mexico's Cultural History.

The films produced in Mexico from approximately the late 1930s through the mid-1950s were of such quantity and quality that the time period is known as Mexico's "golden age" of cinema,[11] *See, e.g.*, Carlos Monsiváis, *Mythologies,* in *Mexican Cinema* 117. This "golden age" was marked by a cinematic product that showed "technical polish, nationalist iconography, and accomplished acting," which made "an indelible mark on the popular imagination throughout the Spanish-speaking world." *Introduction,* in *Mexperimental Cinema* (1998) (available at www.geocities.com/SoHo/Museum/1904/ecatalog1.html).

This era marked as well a complex symbiosis between this new art form and the receptive and enthusiastic Mexican public. Film became so integrated into every- day reality for Mexican audiences that one can call this time a "golden age" for the Mexican public as well: "[T]his was a 'golden age' not

---

[11] *See also* Sentinel Wire Services, *Mexican cinema icon Maria Felix dies at 88* (Apr. 9, 2002) (available at www.hollandsentinel.com/ns-search/stories/040902/new_040902030.shtml?NS-search-set=/3d36b/aaaa0696436bel1 &NS-doc-offset=0&); Sean Logan, *Cine Mexicano,* Prism (Oct. 1995) (describing 'Golden Age' as "a time when [Mexican] films won awards and their filmmakers were known throughout the world...This was the Mexican film industry in the 1940s and 50s").

for the cinema, but for the public, who, among other things, trusted that its idols would explain how to survive in a bewildering age of modernization." Carlos Monsiváis, *Mythologies,* in *Mexican Cinema* 117.

B. The Mexican Film Industry Is Booming Again.

After some fitful starts and stops since the end of that golden age, Mexican cinema is once again experiencing a renaissance.[12] Mexican cinema is now reaping the rewards of its talented and motivated citizens working to make Mexican cinema again recognized in the international cinema scene.

---

[12] *See* Carlos Gutiérrez, ¡Acción! Mexican Cinema Now (The Newest "Nuevo Cine Mexicano"), Cinema Tropical Newsletter (2002) (available at www.cinematropical.com/newsletter/200202/newnewmexicancinema.html) (referring to a *'nuevo cine mexicano'* as deep-rooted in the Mexican film tradition and remarking on ***"this latest renaissance"*** in film production) (emphasis added); Tessie Borden, *Mexican films make box-office inroads at home, in US.*, Ariz. Republic, Apr. 5, 2002 (noting ***"newly vibrant Mexican film industry*** that's smashing old rules and building an international reputation") (emphasis added); Traci Carl, *Change Noted in Mexican Films*, AP (Mexico City), June 24, 2001 (available at www.sanchez-associates.com/articles/mexfilm.html) (noting that quality of current Mexican film making ***"may herald a return to Mexico's 'golden age' of cinema")*** (emphasis added); Rene Rodriguez, *Stardom Strikes Amores Perros Actor: Gael Garcia Bernal says he's hungry for movies about his native Mexico,* Hispanic Magazine.corn (May 2001) (available at www.hispaniconline.com/magazine/2001/may/Cultura/film.html) ("So after 20 years of a great drought, ***the Mexican film industry is booming again,*** which is wonderful") (emphasis added).

See Jennifer Liu, *A New Golden Age for the Silver Screen? The Mexican Film Industry*(available at www.fas.harvard.edu/~drclas/publications/revista/mexico/Liu.html) ("With a new legal framework, better economic conditions, and the interest of private capital, production companies already have dozens of projects in the works"). This industry is now committed to ensuring its constituents receive the deserved credit (and economic benefit) for not only the current excellent production qualities of its films, but also the right to profit fully from past artistic endeavors as well.

This current "boom" can be traced back to about ten years ago and to a palpable sense of public support for good Mexican films. Producer Richard Ham of the award-winning film *Amores Perros* notes that the industry' s current growth stage is a result of "resurgent national pride": "I don't think we are going to go back to the numbers of the great Mexican film industry...I do think we are going to go back to the pride of the golden age." *See* Traci Carl, *Change Noted in Mexican Films*, AP (Mexico City), June 24, 2001 (available at www.Sanchez-associates.com/articles/-mexfilm.html) (quoting Richard Ham).

Director Gonzalez Inarritu, also of *Amores Perros* fame, recognizes film as a vivid means of portraying a culture at a certain place and time:

> "Years ago we were ashamed to go to a Mexican film. ... Now we are prepared to see ourselves, to accept ourselves through cinema. We have the same problems, but with a new attitude about how we express ourselves and how we tell our own stories."

Id. (quoting Gonzalez Inarritu).

Thus, Mexico is primed to claim its rich cinematic heritage, which is embodied in the seven films that the district court held fell into the public domain in Mexico and may not have their United States copyrights restored. These seven films, because of their vintage, represent the building blocks of a rich cinematic history, which has evolved into the current upswing in production of world-renowned Mexican films.

III. THE SEVEN MOTION PICTURES AT ISSUE DID NOT ENTER THE PUBLIC DOMAIN UNDER THE 1928 MEXICAN CIVIL CODE.

Although the district court properly concluded that a producer is an "author" within the meaning of Mexican law, the district court erred in concluding that seven films fell into the public domain in Mexico. These seven films are *Aguila o Sol* (1938), *Besame Mucho* (1945), *Canaima* (1945), *El Corsario Negro* (1944), *Humo en los Ojos* (1946), *Pasiones Tormentosas* (1946), and *Tentación* (1943). Doc. 157 at 7-9.

A. The URAA Restoration Provisions Followed the Original NAFTA Legislation Aimed Specifically at Protecting Vintage Mexican Films.

Mexico actively sought legislation by the United States for the specific type of restoration rights addressed in this case. Indeed, the resulting legislation in NAFTA, addresses the specific concern of the Mexican govemment to ensure protection for these valuable motion pictures. Eric J. Schwartz, *Protecting and Exploiting U.S. and Canadian Intellectual Property Abroad in a Technologically Changing*

World Economy– A U.S. Perspective, 25 Can.-U.S.L.J. 97, 103 (1999).[13]

Public commentary recognizes the negotiated terms of protection initially afforded Mexican films under the initial NAFTA legislation:

> ***The Mexican government was particularly concerned about the protection of older Mexican motion pictures,*** which had been in the public domain in the United States because of Mexican filmmakers failing to comply with the old U.S. formality-based system where you had to put a copyright notice on a published work, register it with the U.S. Copyright Office, and so forth .... ***As part of NAFTA, there was, for the first time, protection afforded for older Mexican works,*** and that language was actually a

---

[13] This initial NAFTA legislation existed until the URAA was signed into law on December 8, 1994. *See generally* Katherine C. Spelman, *Current Developments in Copyright Law 1997,* 497 PLI/Pat 487 (1997); John W. Hazard, Jr., *Copyright Changes under the Uruguay Round Agreements Act,* Copyright L. Bus. & Prac. § 1.10 (rev. ed.). *See also* Alexander Lindey & Michael Landau, 5 *Lindey on Entertainment, Publishing and the Arts* App. D (2d ed. 2001) ("Motion pictures and certain works included in motion pictures produced in Mexico and Canada for which copyrights were restored under the NAFTA Implementation Act will continue to enjoy copyright protection, but such copyright protection will be governed by the new section 104A substituted by the implementing bill"). The URAA restoration provision was envisioned as an even *"more global recapture* of works of foreign origin from the U.S. public domain." *Nimmer on Copyright* § 9A.04 (2002) (emphasis added).

> model in many ways for the United States then to do the same for all the WTO and Berne Convention countries.

Id. (emphasis added).

The result of this change in international copyright law through restoration provisions meant that Canadian and Mexican entities and persons actually enjoyed ***greater*** copyright protection than their American counterparts. Lionel S. Sobel, *Back from the Public Domain: Congress Restores Copyrights to Many Foreign Works*, 17 Ent. L. Rep. 3, 5 (1995) ("Congress decided to make retroactive protection available only for foreign works and not for American works. ...This of course means that Congress has treated foreigners more favorably than Americans"). Despite this counterintuitive action ofthe United States Congress, political and economic motives were at the heart of those decisions. *See id. See also* Alexander Lindey & Michael Landau, 5 *Lindey on Entertainment, Publishing and the Arts* 27-28 (App. D) (2d ed. 2001) (noting lengthy debate among "Congress, the Administration, the private sector, and the academic community" on "various approaches to restoring copyright protection to certain works in the public domain").

Judicial review of the restoration provision should be performed in light of the apparent intent among these countries to ensure protection for Mexico's vintage films.

B. Because No Film Lost Copyright Protection in Mexico Through Expiration of Term of Protection, No Public Domain Issue Should Arise.

The URAA grants a broad restoration right to any Mexican film not in the public domain in Mexico "through expiration of term of protection." *See* 17 U.S.C. § 104A(h)(6)(B). Whatever their status may otherwise be under Mexican law (as to which *see* Sections III.C & III.D, *infra*), there was no summary judgment evidence that any of these seven films is subject to an expired term of protection under Mexican law. Thus, nothing supports the district court's legal conclusion that these seven films are not subject to full restoration of their United States copyrights.

C. *Besame Mucho, Canaima, Humo en los Ojos,* and *Pasiones Tormentosas* Are Not Subject to the 1928 Civil Code's Registration Requirement.

When the new *Ley Federal de Derecho de Autor* became effective to abolish a registration requirement for artistic works, certain films were within the three-year statutory time period in which they could be registered under the 1928 Civil Code. *See* C.C.D.F. art. 1,189 (1928). Thus, they had not fallen into the public domain for lack of registration.

The *amicus* will not repeat here the argument on this point in the Film Owners' brief. 5th Cir. R. 29.2. Rather, the *amicus* indicates its agreement that because the three-year "grace" period runs from the date the film is exhibited (used here as a date of "publication", *but see* Section III.D, *infra),*

basic arithmetic demonstrates this point. One need only add three years to the date being used as the film's "publication" date, a calculation done below:

Film Title	**Date of "Publication"**	**End of 3-year grace period**
Besame Mucho	March 1945	March 1948
Canaima	October 1945	October 1948
Humo en los Ojos	September 1946	September 1949
Pasiones Tormentosas	November 1946	November 1949

Each of these four films was within the three-year grace period when the 1947 Author's Right law became effective on January 14, 1948. Thus, as of January 14, 1948, these films were not in the public domain and were properly subject to the new authors' rights laws that expressly abolished the registration requirement under the 1928-Civil Code.[14]

---

[14] That pre-1948 films became subject to the 1947 law upon its effective date is shown by Article 2 of the transition articles of the 1947 law. That article granted a six-month grace period for registration of pre-1948 works which "had fallen in the public domain for not having been registered within the period indicated by" the 1928 law. (Film Owners' Record Excerpts app. G). Of course, the four films under discussion here needed no grace period, inasmuch as the period for their registration under the 1928 law had not expired.

D. The 1928 Civil Code– With No Specific Provisions for Motion Pictures–Should Not be Used to Destroy Longstanding Ownership Rights in the Even Older Films *Aguila o Sol, El Corsa–rio Negro*, and *Tentación.*

1. The 1928 Civil Code Did Not Envision the New Art Form of Film and Made No Provision for It.

When the 1928 Civil Code was written, film was in its infancy. The short documentary-type films first made at Chapultepec castle for public viewing were created just 32 years earlier. The first semblance of a film "industry" did not even exist until approximately 1916 through 1920, a time when Mexican society was in "profound transformation." Carl J. Mora, *Mexican Cinema: Reflections of a Society 1896-1988* 19 (1989). The first full-length film made in Mexico would not premiere until 1916. *Id.*

In addition, the first film school would not be organized until 1917, when film making had achieved sufficient importance for the Mexican government to order that a cinematic school be formed as part of the National School for Theatrical Music and Art. *Id.* As this event shows, film had to be placed within existing institutions. No school was devoted to film alone. Rather, film was simply added alongside other longstanding and recognized art forms such as music and art.

Thus it is not surprising that, as the Film Owners have explained, *see* Film Owners' Brief at 43, the 1928 Civil Code

linked its registration requirement to written "publication," a term inapplicable to the exhibition of motion pictures.

2. Because a Technological Change Renders the 1928 Civil Code Inappropriate for Film, Public Policy Should Be Considered.

Because of the lack of a registration requirement in the 1928 Civil Code aimed at film works specifically, it would work an improper deprivation of property rights to hold that a film exhibited or released during that time fell into the public domain for lack of registration. Indeed, Mexican law has never so held. When Mexican law ultimately caught up with the art form of film, it placed it on an equal footing with other art forms, providing in the Author's Rights Law of 1947 that copyright exists at the moment of any artistic creation.

The conundrum which results when technological changes render a law ambiguous has been addressed in United States copyright law. Reference to United States law is proper in this case should the Court perceive a shortcoming in the evidence of foreign law. *See Cantieri Navali Riunitu v. M/V Skyptron,* 802 F.2d 160, 163 n.5 (5th Cir. 1986) (court may look to forum law to fill in gaps in establishing foreign law).

The United States Supreme Court has held:

> When technological change has rendered its literal terms ambiguous, the Copyright Act must be construed in light of this basic purpose [to permit the public to benefit from an author's labor].

Twentieth Century Music Corp. v. Aiken, 422 U.S. 151,156 (1975). *See also Sony Corp. v. Universal City Studios, Inc.,* 464 U.S. 417, 431-32 (1984).

Other courts have applied this principle as well, to address, for example, the advent of the photocopy machine and computer software. *See Sega Enterprises Ltd. v. Accolade, Inc.,* 977 F.2d 1510, 1527 (9th Cir. 1992) (court must look at underlying purpose of Copyright Act in considering ***software,*** a "relatively unexplored area in the world of copyright law"); *American Geophysical Union v. Texaco Inc.,* 60 F.3d 913, 917 (2d Cir. 1994) (modem technology such as ***photocopy machine*** creates need for law to balance author's interest in preserving integrity of copyright and public's right to enjoy benefits).

It is a recognized principle of Mexican law that a new law may not be retroactively applied to harm any person, but should be retroactively applied when it favorably modifies the civil condition of persons or favors them in their property rights. Mex. Const. art. 14; "Maria Luna Vda. De Rangel," 132 S.J.F. 304 (1957); "[anonymous]," 131 S.J.F. 599 (1957); "Salvador Bristain Ivelles," 132 S.J.F. 499 (1956). Retroactive application of the 1947 law's abolition of registration requirements to pre-1948 films not contemplated or directly addressed by the 1928 law would comport with this principle favoring the benign retroactivity of new law.

For decades these vintage films were marketed by their longtime owners without interference. No dispute ever existed, from the 1940s until the 1990s, as to their ownership under Mexican law. Applying the Author' s Rights Law of 1947 therefore only ***benefits*** these films' owners. ***Not***

applying it only ***harms*** them and Mexico's cultural patrimony. Thus, this retroactivity principle should apply here.

E. Policy Considerations Dictate Holding These Films Are Not in the Public Domain in Mexico.

Several competing policies exist in this case, policies that go far beyond United States copyright law:

(i) policies of ***Mexican*** intellectual property law generally, which favor the ***author*** over the public interest, as seen in the concept of a "moral right" in an artistic work;

(ii) the restoration provisions of the NAFTA whose political and economic purposes aim to restore lost U.S. copyrights for vintage Mexican films; and

(iii)the overlay of comity, which requires a court to respect a foreign country' s sovereignty.

The conclusion that ***none*** of the films released under the 1928 Civil Code – *Aguila o Sol*, *El Corsario Negro*, and *Tentación* – are in the public domain strikes the best balance among these policies. The restoration provisions of NAFTA, which were applied specifically to Mexican films and were replaced by the URAA, fulfill certain political issues and goals underlying that entire legislative scheme. Although Mexican law as of 1928 does not clearly speak to the issue of a registration for motion pictures, it is plain that as the medium developed, Mexico became more cognizant of its value. That recognition is manifest in the 1947 Author's Right Law that recognized a ***moral*** right in a work at the moment of

creation- protection without registration. Because Mexican copyright law places greater emphasis on the author's moral right, that policy, and the longtime lack of any interference with ownership rights under any Mexican law for these older films, should be the overriding concerns for this Court's resolution of the erroneously decided public domain issue.

CONCLUSION

The future is grounded in the past. To ensure the future proper control and economic benefit of these films-in the United States- films that figure so proudly in Mexico' s cultural history - the copyright in them must be declared to be in the Film Owners. Mexican law, which represents Mexico's determination of how to balance the competing concerns in such matters, clearly permits that result.

STATEMENT OF IMMUNITY

Nothing contained in this brief shall be construed as a waiver of the immunities to which Mexico is entitled under international law, the Foreign Sovereign Immunities Act, and any treaty-based immunity. The filing of this brief shall not imply or confer a submission by Mexico to the jurisdiction of any United States Court or Louisiana Court.

Respectfully submitted:

/s/_____

P. MICHAEL JUNG
Texas State Bar No. 11054600
Strasburger & Price, L.L.P.
4300 Bank of America Plaza
901 Main Street
Dallas, Texas 75202
(214) 651-4300
(214) 659-4022 (telecopy)
michael.jung@strasburger.com

ATTORNEY FOR *AMICUS CURIAE*

CERTIFICATE OF SERVICE

I hereby certify that this *BriefofAmicus Curiae* has been served on all parties to this appeal by mailing two copies in written form, and one copy in electronic computer-readable form on a 3.5" disk in WordPerfect 8.0, labeled in accordance with 5th Cir. R. 31.1, to: David Frishman, Esq., Attorney for Appellants/Cross-Appellees, 5621 Third Street, Katy, TX 77493; Peter Thompson, Esq., and Steven Scott Reilley, Esq., Attorneys for Appellees/Cross-Appellants, Thompson & Reilley, P.C., 1200 Smith Street, Suite 660, Houston, TX 77002-4592; David Holman, Esq., and Robert Alan York, Esq., Attorneys for Appellees/Cross-Appellants, Holman & Keeling P.C., 440 Louisiana, Suite 2220, Houston, TX 77002; and I. Nelson Heggen, Esq., Attorney for *Amicus Curiae* Confederation Revolucionaria de Obreros y Campesinos, 2211 Norfolk No. 820, Houston, TX 77098, all on this 22nd day of July, 2002.

I further certify that this brief was filed by mailing in accordance with Fed. R. App. P. 25(a)(2)(B) by mailing seven copies in written form, and one copy in electronic computer-readable form on a 3.5" disk in WordPerfect 8.0, labeled in accordance with 5th Cir. R. 31.1, to: Hon. Charles R. Fulbruge III, Clerk, United States Court of Appeals for the Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, on the 22nd day of July, 2002.

/s/_____
P. MICHAEL JUNG

CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.3 & 32.3, the undersigned certifies this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7).

1. EXCLUSIVE OF THE EXEMPTED PORTIONS IN 5th Cir. R. 32.2, THE BRIEF CONTAINS 5,782 words.

2. THE BRIEF HAS BEEN PREPARED in proportionally spaced typeface (Times New Roman 14pt) using WordPerfect 8.0.

3. THE UNDERSIGNED UNDERSTANDS A MATERIAL MISREPRESENTATION IN COMPLETING THIS CERTIFICATE, OR CIRCUMVENTION OF THE TYPE-VOLUME LIMITS IN Fed. R. App. P. 32 (a)(7), MAY RESULT IN THE COURT'S STRIKING THE BRIEF AND IMPOSING SANCTIONS AGAINST THE PERSON SIGNING THE BRIEF.

/s/_____
P. MICHAEL JUNG

Amicus Curiae Brief of the Government of Mexico

Appendices

*** Only English translation included for purposes of this Appendix***

APPENDIX 1

UNOFFICIAL TRANSLATION

Speech given by the Secretary of Foreign Affairs of Mexico, Jorge Castañeda, to the French Attachés for Culture and Cooperation

Paris, July 23, 2001

Ladies and Gentlemen:

I was very happy to accept Minister Védrine's invitation to exchange opinions on cultural cooperation and to talk a bit about the new initiatives of cultural diplomacy that President Vicente Fox's administration has embarked upon in the past eight months. I am sure that we will be able to take common courses of action regarding cultural cooperation, since we share many concerns about the place of culture in the world and the need to preserve cultural diversity.

France, whose international prestige was established in large part thanks to creations of the spirit, has always been careful to create institutions capable of making its ambitions in this sphere into realities. It is a model for all nations that would like to make their cultures known. For a long time, Mexico

has also made cultural policy into one of its diplomatic instruments, giving it the same importance as commercial promotion. Nevertheless, France has a much greater presence in the world, having structured its actions for a longer period of time, especially since the end of the Second World War. The strength of France's cultural presence is based on its global network, and is nourished by considerable human and financial resources. Ambassador Delaye has the good fortune to have at his disposal a budget for cultural, scientific and technical cooperation that is far greater than the total budget of Mexico's Foreign Secretariat.

Nevertheless, we are convinced that culture has been— and without a doubt will continue to be—the best letter of introduction that our country can have in the world, which is why we have decided to dedicate more effort to this task. Furthermore, we will do this convinced that Mexico's new position as a fully democratic nation demands that we spread throughout the world an image of our country that corresponds both to the dynamic, pluralistic and democratic nature of our society and to the rich Mexican cultural heritage.

The new effort to make our culture known derives from two fundamental values of Mexico's international endeavors that are well known to France: solidarity and cooperation.

Solidarity, expressed through our desire to live closer to others and to share their values in the same way that we seek to have them know ours. We want to be with others; we want to respect, recognize and understand others. We want, when it is necessary, to provide assistance to others when they are in need. For this reason, recently, Mexico was the first to

come to the assistance of the people of El Salvador when they were seriously affected by an earthquake.

Cooperation, especially in the cultural sphere, because the mutual penetration of our ideas, of our works, o our creations is a privileged means through which our nations can deepen not only their respective knowledge, but can also increase exchanges in all areas. We want to be part of other efforts, to act jointly and to participate with others.

Solidarity and cooperation are essential elements of culture. If we look at it closely, it is clear that culture has always meant cooperation between generations and, frequently, solidarity between peoples. Without cooperation there is no culture; without culture, there is no solidarity.

Aware of the value of culture in defining its identity and encouraging cooperation and solidarity with the rest o the world, Mexico proposes to develop a new policy of cultural dissemination based on principles that correspond to the new times in which we are living both at home and on the international scene.

We must recognize that only democracy allows all voices to be heard within a nation and, in addition, for their echo to be heard clearly abroad. The Mexico of the last few years is discovering that a large part of its strength resides precisely in its diversity. Tolerance and plurality are replacing censure and uniformity. And it is for this reason that the consolidation of democracy is so important for Mexico's cultural policy: only in a genuin democracy is it guaranteed that the State is at the service of culture, and not the reverse.

This new cultural policy should be based on Mexican reality without disguising it as before; it should not onl allow recognize criticism and diverse opinions, but also give them room for expression, thus strengthenin Mexico's image today. But we must proceed cautiously: democracy is a necessary condition for creativity, bu not a sufficient condition. It does not free us from having to think for ourselves. I would like to quote statement made by Minister Hubert Védrine in his most recent work, French Letters: *"To have influence; first i is necessary to be able to have one's own ideas. What influence can we have if we are content to repeat th conventional language of what is "politically correct" at that moment and the language of consensus? To hav more influence is to contribute added value to the debate. Independence of the spirit and of the project is no only possible, it is necessary."*

We must face the risks entailed by globalization for cultural diversity. The impact of this global process on th various national cultures shouldn't be exaggerated, especially in those such as the French or Mexican culture whose vitality and strength makes it easy to preserve their identities. However, it is necessary to take action prevent the gradual development of an increasingly uniform culture that puts at risk the diversity of tradition and cultures. This demands that the State adopt strategies to assure the continued vitality of the nationa culture by supporting cultural expressions in the arts, handicrafts and the cultural industries in general, i collaboration with the private sector.

But the preservation of one's own identity or culture does not imply isolation. To the contrary, we must ope ourselves up to the world without fear, both to understand it and for it to understand us as we are. The histor of our peoples has taught

us that inter-cultural contacts, far from impoverishing us, enrich us. The youn generations in France and Mexico seem to intuit this; they are demonstrating that they are capable of keepin their minds and hearts open to other cultures. Our youth has taken symbols, icons and customs for itself tha might have seemed strange to us a few years ago but that now filter into our identity. They enable us to adap better to the unstoppable and increasingly dynamic rate of change that the globalized world is experiencing.

Globalization creates great opportunities, as long as integration into this powerful current is seen as a mean rather than an end in itself. The world today facilitates contacts, multiplies and amplifies exchanges and, b opening windows and doors, allows many voices to be heard. We must not let the opportunity that thi represents pass us by. The world wants to hear us and it is our duty to speak with a clear voice on th international scene.

In order to fulfill this desire, France offers us an example worthy of imitation. France has been able to face th challenges of globalization without undermining its own identity. French culture, with its extraordinary historica heritage and its no less vital present, continues to be a necessary point of reference on the global cultura scene. France has achieved a balance between defending its identity and opening up to the global cultura currents that is an example for other nations with strong cultural traditions that also seek to be open to dialogu and exchanges in these times of accelerated integration, as is Mexico's case.

Equally, we must seek a better balance between governmental activity and private initiative, betwee Behemoth and

Mammon. We do not seek to silence others or to limit anyone to restrictive definitions, but t spread an awareness of Mexican culture and to invite its different voices to participate in the global concert. T do this, we want to establish new links between the government, businesses, private associations and artisti groups or schools in order to coordinate efforts to form citizens who are open to the world but who have dee roots in their local culture.

To achieve this, we want Mexican culture to become a keystone of our foreign policy. Cultural disseminatio should not only structure the actions of the Mexican government more decisively in terms of the country' image; tourism, education and even commercial and financial activities should also be more closely linked t Mexican culture, as its dividends cannot be ignored. France knows this well; it is an exporter of culture.

Perhaps the United States offers the best example of the potential that exists in this area: its cultural product are its second most important export. To take advantage of the opportunities that exist in this sector, we mus develop cultural industries and international networks for cultural commerce. Mexico's cultural exports hav had sporadic, significant successes in movie making, television and publishing. Nevertheless, a mor systematic and coordinated effort is needed to multiply and extend those successes to other types of cultura creativity.

The Foreign Ministry that I head is taking five concrete measures based on the principles that I have just mentioned:

1. **Strengthening the administrative structure for cultural policy.** In the new administration, the General Direction for Educational and Cultural Cooperation now reports directly to my office. Decisions are taken more rapidly; I have a clearer idea of the projects; I can negotiate personally with other cabinet members.

2. **Reforming and strengthening the network of Mexican cultural institutes worldwide.** Our institutional presence is still modest: we have 38 cultural centers and institutes abroad. Twenty-two of them are in the United States; this is the most extensive foreign network in that country.

   We are creating a "Mexico Institute," based in part on institutes such as the Goethe Institute and the Cervantes Institute. Through this new entity, we will be able to unify the legal frameworks of the centers that already exist; there will be better-coordinated operations and, above all, we will be able to distribute resources in a more balanced fashion.

   The Mexico Institute will play a central role in promoting and publicizing culture, the arts, education, science, technology, tourism, handicrafts and, basically, the Mexican cultural industry and its products.

   This last goal is an enormously important task. We are convinced that Mexico's new position through the spread of its culture will depend in large part on the penetration and presence of our cultural products. I am referring to Mexican poetry and novels; to art and sculpture expositions; to the eroticis of Toledo's paintings and to the installations of Gabriel Orozco. But I am also referring to

archeology, to movies, to soap operas and to the popularity of Salma Hayek; to tequila and to mariachis. Only through a broad international campaign for the artistic heritage of our country will we be able to consolidate a realistic image of a Mexico endowed with a flourishing creative dynamism and with one of the richest cultures in the world. This not only will allow us to develop the export potential to which I referred but to reverse stereotypes and obsolete views about Mexico.

Another important task of the Mexico Institute will be to teach Spanish. As Mexico is the most populous Spanish-speaking country in the world, we have a special responsibility to promote our language and the Latin American culture in general. For this reason, the Institute will strengthen knowledge o Spanish through courses and through issuing international certificates.

3. **Increasing the participation of the private sector in cultural promotion abroad.** Some private consortia have already used the network of cultural institutes to present their collections of Mexican art. We want Mexican businesses to participate more directly, either through the Mexico Institute or other foundations. The State alone cannot underwrite the cost of strengthening Mexico's presence abroad. We want to begin an effective partnership with the private sector so that the dissemination of Mexico's culture benefits from the synergies possible between the State and the market without subordinating either of them.

4. **Replacing the cultural attachés and institute directors.** In order to project an image of a pluralistic and modern

Mexico, we will take advantage of a new generation of artists, intellectuals and cultural promoters who truly reflect the dynamism of the new Mexico. Their backgrounds are as diverse as their creations. In Paris, for example, the cultural attaché and director of the cultural center is the young, very talented author, Jorge Volpi, who has gained thousands of readers throughout the world and has earned international recognition. The new cultural representatives will be able to use their judgement freely, select the vehicles and messages that they consider the most appropriate and project in their own ways not only who we are but who we want to be.

This policy will not seem unusual to France. There are many examples of outstanding French intellectuals who at some time in their life worked abroad, such as Raymond Aron in Cologne, Lévy-Strauss in New York, Michel Foucault in Uppsala or Jean-FranV ois Revel, who was a philosophy professor in the French Lycée in Mexico where I, in fact, studied during junior high and high school and received my diploma. In addition, there are many French diplomats with an intellectual or literary background: Paul Claudel, Saint John Perse, Alain Peyrefitte and Romain Gary all worked in the Ministry of Foreign Affairs at some point.

Mexican diplomacy also benefited greatly from the intellectuals who represented their country abroad. I will mention only two of the most important among them who represented Mexico in France: it was here in Paris in 1949 that Octavio Paz, then a second secretary in the Mexican embassy, finished The Labyrinth of Solitude, a work that made him famous. Carlos Fuentes, who is no

less famous, was a-brilliant ambassador of Mexico in France in the seventies.

5. **Giving cultural activities more flexibility and differentiation.** Greater centralization of resources and structure is necessary, but cultural events must respond to local circumstances. This is, of course, one of the central problems of all cultural policy. Mexico addresses four different universes in terms of cultural issues and each one needs differentiated products and actions.

   North America possesses unique characteristics due to the millions of Mexicans and Spanish-speakers who reside there. This community needs cultural goods and services that enable it to remain close to its roots. Latin America and the Iberian peninsula, because of their affinity with Mexico, also have a specific cultural focus, where Mexico is in a privileged cultural position. In the rest of Europe and the Far East, we are interested in increasing our presence although we are aware that we face a big challenge in making our culture known in nations with which we haven't maintained close contact in the past, and in which the cultural competition is enormous. Finally, in the rest of the world, we will try to make incremental progress in promoting our culture according to our possibilities, through Mexico's embassies and consulates.

   I would like to end with a few words about cultural cooperation between Mexico and France. I have already mentioned some important points of agreement between the cultural policies of our countries. In forums such as UNESCO, we constantly express the need to guarantee the cultural diversity and identities in the world. An

important example was the 1982 World Conference on Cultural Policies that was held in Mexico, and the very important declaration that arose from it that included commitments guaranteeing cultural diversity and fomenting cooperation in this area. On that occasion, Jack Lang, then the Culture Minister of France, played an important role.

I need not say that Mexico has always warmly welcomed France's cultural presence, first through the IFAL and later through the *Casa de Francia*. In the same way, France, by welcoming the Mexican Cultural Center, is cooperating with Mexico's cultural campaign and contributing to the country's prestige. I believe that the moment is right to further strengthen the collaboration between our cultural institutes. For this reason, I propose that the Mexican Cultural Center in France and the IFAL undertake new, joint programs to enrich their cultural projects in our respective countries.

Mexico and France share a long history of cultural exchanges. The history of our relationship is, in large part, a history of culture. From the early days of Mexico's independence to our times, France has been an inexhaustible fountain of inspiration and of ideas for successive generations of Mexicans. Mexican culture, on the other hand and especially in the post-war period, has generated more and more interest in France, both due to the wealth of our historical heritage and to the vitality of our contemporary culture. The creative explosion that has accompanied political change in Mexico will surely find an echo in a country such as France, which is always sensitive to new creative currents in all of their

manifestations. We will strengthen our cultural mission to the benefit of our societies,

Ladies and Gentlemen:

Every country has its differences. Ours is the extraordinary vitality of the Mexican culture, understood in its widest sense. Within Mexico, it is perhaps the only instrument we have available to continue strengthening an identity within the diversity of the Mexican peoples that enables us to unite and recognize ourselves as Mexicans. Abroad, Mexico's culture will continue to be the aspect of our nation that awakens the most interest. Arts and letters, handicrafts and Mexico's rich historical heritage are perhaps our greatest comparative advantage. They are also our best link with the rest of the world.

In *Piedra de Sol,* that intense reflection on consciousness, Octavio Paz wrote, *"so that I can be, I must be another; I must leave myself and seek myself among others."* Mexico must also leave itself to find its full existence among the other nations. Mexico's cultural heritage and the vitality of our society will only reach their full expression if they become not only ours, but everyone's.

Thank you very much.

*** Appendices 2-4 have been omitted as they are irrelevant to the issues presented in the petition.***

Amicus Curiae Brief of the Government of Mexico